



Board of
Behavioral
Sciences

1625 North Market Blvd.
Suite S-200
Sacramento, CA 95834
(916) 574-7830
TDD (916) 332-1700
Fax (916) 574-8625
www.bbs.ca.gov

MEETING NOTICE

May 29, 2008

Department of Consumer Affairs
1625 N. Market Blvd., Hearing Room
Sacramento, CA 95834
(916) 574-7830

Visions Unlimited
7000 Franklin Boulevard, Suite 1230
Sacramento, CA 95823
(916) 394-2010

May 30, 2008

Quinn Cottages
Chatfield/Mercy Room (Pavilion)
1500 North A Street
Sacramento, CA 95811
(916) 492-9065

Thursday, May 29
8:30 a.m.

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

FULL BOARD CLOSED SESSION

- I. Pursuant to Government Code Section 11126(c)(1) Regarding Administration of Licensing Examinations for Licensed Clinical Social Workers.

FULL BOARD OPEN SESSION

- II. Introductions
- III. Approval of February 21-22, 2008 Board Meeting Minutes
- IV. Discussion and Possible Action Related to the Association of Social Work Boards Examination for Licensure as a Clinical Social Worker
- V. Presentation Regarding the Prevention and Early Intervention Component of the Mental Health Services Act by:

Michelle L. Lawson, MSW
Staff Mental Health Specialist
Department of Mental Health
Prevention and Early Intervention
- VI. Chairperson's Report
 - A. Future Board & Committee Meetings
 - B. Approval of Board Self Assessment Survey



Arnold Schwarzenegger
Governor
State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

- VII. Executive Officer's Report
 - A. Budget Update
 - B. Licensing Statistics
 - C. Personnel Update
 - D. Mental Health Services Act Coordinator's Report
 - E. Discussion and Approval of Comment on Proposed California Department of Education Regulations
 - F. Discussion and Possible Action on 2008 Legislation:
 - 1. Senate Bill 1779
 - 2. Proposed Technical Statutory Changes for 2008 Legislation
 - G. Review and Possible Action on Draft Community Assessment Survey
 - H. Enforcement Statistics
- VIII. Discussion and Possible Action on Assembly Bill 239 Relating to Drug and Alcohol Counselors
- IX. Report of the LCSW Education Committee
- X. Election of Officers

BOARD COMMITTEE MEETING

- XI. Planning Committee*
 - A. Review and Approval of October 24, 2007 Meeting Minutes

* - A quorum of the Board may be present at the committee meetings. Board members who are not on the committee may observe, but may not participate or vote.

2:30 P.M. FULL BOARD OPEN SESSION

LOCATION: VISIONS UNLIMITED

- XII. Presentation Regarding Visions Unlimited Programs by Visions Unlimited Staff
- XIII. Discussion with Visions Unlimited Staff and Tour of Facility

**Friday, May 30
8:30 a.m.**

**Quinn Cottages
Chatfield/Mercy Room (Pavilion)
1500 North A Street
Sacramento, CA 95811
(916) 492-9065**

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

XIV. Presentation By California Victims of Crime Program

XV. Policy and Advocacy Committee Report

- A. Recommendation #1 – Sponsor Legislation to Clarify Unprofessional Conduct Statutes
- B. Recommendation #2 – Support Assembly Bill 164
- C. Recommendation #3 – Support Assembly Bill 1486 If Amended
- D. Recommendation #4 – Support Assembly Bill 1887
- E. Recommendation #5 – Support Assembly Bill 1922
- F. Recommendation #6 – Oppose Assembly Bill 1925 Unless Amended
- G. Recommendation #7 – Oppose Assembly Bill 1951
- H. Recommendation #8 – Support Assembly Bill 2652
- I. Recommendation #9 – Consider Senate Bill 1415
- J. Recommendation #10 – Support Assembly Bill 2543 If Amended
- K. Legislation Update
- L. Regulation Update

XVI. Update and Possible Action on Board Activity, Proposed Legislation, and Proposed Regulations Regarding Acceptance of Degrees Granted by Institutions Approved by the Bureau for Private Postsecondary and Vocational Education

XVII. Public Comment for Items Not on the Agenda

XVIII. Suggestions for Future Agenda Items

11:30 a.m.

XIX. Presentation Regarding Programs by Quinn Cottages Staff

XX. Tour of Facility and Client Visits with Quinn Cottages Staff

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Christina Kitamura at the Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834, or by phone at (916) 574-7835, no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 574-7830.

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DRAFT MEETING MINUTES

February 21-22, 2008

Doubletree Guest Suites Anaheim Resort/Convention Center
2085 S. Harbor Blvd.
Anaheim, CA 92802

Thursday, February 21

Members Present

Ian Russ, Chair, MFT Member
Elise Froistad, MFT Member
Judy Johnson, LEP Member
Karen Roye, Public Member
Renee Lonner, LCSW Member
Victor Perez, Public Member
Joan Walmsley, Vice Chair, LCSW Member
Gordonna DiGiorgio, Public Member

Members Absent

Victor Law, Public Member
D'Karla Leach, Public Member
Rita Cameron Wedding, Public Member

Staff Present

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Christina Kitamura, Administrative Assistant

Guest List

On file

FULL BOARD OPEN SESSION

Ian Russ called the meeting to order at 8:36 a.m. Christina Kitamura called roll, and a quorum was established.

I. Petition for Reinstatement

A. Lidia Zoila Waller, MFC 31054

Daniel Juarez, Administrative Law Judge of the Office of Administrative Hearings, briefly explained the procedures for the proceeding.

The hearing began at 8:40 a.m. Board members stated their names for the record. Thomas Rinaldi, Deputy Attorney General, represented the People of the State of California. Lidia Zoila Waller, petitioner, represented herself.

Mr. Rinaldi presented documents submitted for the Board's consideration in the matter. Ms. Waller claimed that she did not receive the documents. Ms. Waller was then provided with the documents and given an opportunity to review the documents.

Mr. Rinaldi stated that it was the Attorney General's opinion that the petition should not be granted. Mr. Rinaldi provided a brief case overview.

Ms. Waller testified on her own behalf. Mr. Rinaldi asked several questions for Ms. Waller's response. Board members also asked questions for Ms. Waller's response.

David Fraser, Executive Director of Inland Care Giver Resource Center, testified as a witness for Ms. Waller. Mr. Rinaldi asked several questions for Mr. Fraser's response. Board members also asked questions for Mr. Fraser's response.

Both parties made closing arguments. The hearing ended and the record was closed at 10:40 a.m.

The Board adjourned for a break at 10:40 a.m. and reconvened for a full board closed session at 10:51 a.m.

FULL BOARD CLOSED SESSION

II. Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

A. Petition for Reinstatement (Lidia Zoila Waller, MFC 31054)

B. Proposed Stipulation (Brian Kenneth Chesher, MFC 28326)

Full board closed session ended at 12:13 p.m. The Board adjourned for lunch and reconvened at 1:02 p.m. for the full board open session.

FULL BOARD OPEN SESSION

III. Introductions

Ian Russ welcomed guests in attendance. Audience members introduced themselves.

IV. Approval of November 8-9, 2007 Meeting Minutes

Joan Walmsley moved to approve the November 8-9, 2007 board meeting minutes. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.

V. Discussion of Examination Complaints

Patrick Thompson addressed the Board regarding the licensing process for clinical social workers and his experience with the process, and requested corrective action to be taken. Mr. Thompson was a license clinical social worker in Washington D.C. When he moved to California, he discovered that California did not offer reciprocity. Mr. Thompson took the exam and did not pass. He feels that the reason why he did not pass is because PSI, the former test vendor, failed to give him correct information. He was told that the exam had 40 questions, 10 of which were pre-test items; and clock would not start until he completed the pre-test items. Mr. Thompson stated that the clock started at the beginning of the pre-test items.

Mr. Thompson questioned the validity of the exam and noting the varying pass rates. He also compared the exam pass rates to those of the Association of Social Work Boards (ASWB) exam. Mr. Thompson noted that examination issues are not an ongoing discussion at each board meeting, and feels that it should be an ongoing discussion. He stated that to not offer reciprocity creates a challenge for out-of-state licensees, the state and consumers.

Mr. Thompson outlined his personal experiences and described them as frustrating. He wrote a letter to the Board of Behavioral Sciences (BBS) and stated that he never received a response. He contacted the office several times to inquire about the board meeting agenda, in which he was consistently told that the agenda was not set. Once the agenda was set, he discovered that this issue was not included on the agenda, and he would be given an opportunity to address the Board at the end of the meeting under "Public Comments." Subsequently, the issue was placed on the agenda. Mr. Thompson added that his intention was not to make a complaint, but to give feedback.

Dr. Russ asked Mr. Thompson what he is requesting of the Board. Mr. Thompson replied that he wanted an indication as to whether the Board is considering the ASWB exam, if the Board intends to continue with the current exam, and if the Board will allow the exam will be independently tested.

Dr. Russ stated that he would respond to some of the issues in his report on the next agenda item.

Ms. Johnson asked Mr. Thompson if he received the response in a letter dated February 12, 2008, signed by Paul Riches. Mr. Thompson replied that he did not receive the response. Mr. Riches stated that a response was mailed to Mr. Thompson. Ms. Johnson provided a copy of the letter and an attached document to Mr. Thompson.

Mr. Riches added that a review of the ASWB exam is proceeding. A psychometrician, Tracy Montez, was retained by BBS to perform an audit of the national exam. Renee Lonner, Joan Walmsley and Tracy Montez are visiting ACT Center, the exam administrator for ASWB, in March. They will report back at the May Board meeting.

Victor Perez added that California does not offer reciprocity for any profession. California develops its own exams. The Board has say over the administration of the exam, and the Board is taking steps to ensure that it is a properly administered exam and that it meets California standards.

VI. Chairperson's Report

A. Future Board Committee Activity

Dr. Russ reported that even though exam issues and concerns are not each agenda, it is an ongoing discussion. Concerns are brought to the Board on a regular basis by professional organizations and individuals. There are procedures to follow, which include gathering experts from the field, performing occupational analyses, training subject matter experts to develop questions. The questions are tested, and psychometricians analyze the performance of the questions.

Dr. Russ stated that there have been ongoing discussions regarding BBS's involvement with the national exams and reciprocity. He expressed concern about the complaints received. In order to look into these matters, Dr. Russ is appointing a committee to evaluate the issues regarding the exams. The committee will consult with a psychometrician and determine how the Board can construct an exam that represents the needs of California that is legitimate and fair. The committee will address issues regarding

particular exam questions and determine if they are performing properly. Elise Froistad will chair the committee. Joan Walmsley will serve on the committee. Dr. Russ would like a board public member to serve on the committee.

Renee Lonner and Joan Walmsley will be reviewing the ASWB exam in Iowa in March. They will report their findings to this committee when they return.

The committees will be reorganized. The Consumer Protection Committee and the Policy and Advocacy Committee will be combined under one committee: Policy and Advocacy Committee. Donna DiGiorgio will continue to chair this committee. The committee members will include Karen Roye, Renee Lonner, and Ian Russ. This committee will meet quarterly throughout the state.

B. Professional Ethics Review Process

Ethics are designed for particular types of practice: confidentiality, privacy, and one-to-one medical model orientation. As we move into a field of community-based services that required a different ethics model, where in some cases a relationship between a mental health provider and client is sometimes necessary for recovery, for example, assisting a client to find housing. Currently, this is conceived as a “dual relationship,” and the Board needs to find a way to approach that.

This committee will meet during each Board meeting and discuss the ongoing ethics issues. The committee will be comprised of all Board members.

Dr. Russ appointed a new committee: Licensed Clinical Social Worker (LCSW) Committee. Joan Walmsley and one Board public member will serve on this committee, with Renee Lonner as the chair. This purpose of this committee is to gather the social work community and have an open discussion to ultimately inform the Board regarding the social worker in California: what is a social worker, what is the social worker doing, what should the social worker be doing, what is the training, what is the background, what should be tested and should not be tested, is the social worker meeting the needs of the agencies.

This committee will be the opportunity for the social work community to inform the Board and have open discussions and debates, so that the Board can be informed about the nature of clinical social workers that the Board is responsible for in licensing, for testing, and for holding accountable to standards.

Mr. Riches stated that this is an ambitious agenda for Board members and staff. This year will also be a busy legislative year. This requires staff and Board members to pull back on other routine business to create room to take on the larger issues. The energy and resources will be focused on the substantial issues.

Janlee Wong, Executive Director of the National Association of Social Workers (NASW) California Chapter, had several questions regarding the Exam Committee: What is the purpose of the Exam Committee? Is the purpose of the Exam Committee to be a gatekeeper? Is the purpose to filter out people before they become licensed? Is the purpose to measure competence in terms of knowledge, thinking, and/or practice skills?

Mr. Wong added the Board should have goals and objectives, and expected outcomes for both newly formed committees. He requested that the Board be upfront and acknowledge that there is a possibility that the Board will move forward to change the LCSW law or regulations.

Dr. Russ stated that one of the possibilities is that the Board will go in and change the LCSW law.

Mr. Wong stated that with the creation of the Exam Committee and the LCSW Committee there appears to be a connection, which the reason there is a problem with the exam is because there is a problem with social work education. Mr. Wong urged the Board to approach these committees objectively and gather research and evidence when making public policy.

Mr. Wong questioned the role of the consumer, indicating that a consumer should be on the committees. The MHSA clearly states that consumers are to be hired as mental health workers. Consumers need to be brought to the table because they are getting the education, trying to pass the exams, and trying to become LCSWs.

Mr. Wong explained that historically, social work is at least 100 years old or more. Before there was a license in 1964, the profession defined the practice of social work. Social work was not defined by the license. It appears that may be changing. The marriage and family therapist (MFT) license defines the MFT, and that is all in statute. However, that is not the case with the LCSW.

Mr. Wong stated that he wants to see evidence and research in this process, and he wants everyone to make good public policy decisions for LCSWs and for social work in California.

Dr. Russ stated that this is going to be an educational process, and encouraged the Committee to share literature with others on the BBS website, and to utilize and share relevant literature. The Committee is going to determine how to include consumers in the process.

C. Supervision Workgroup Report and Possible Action to Approve Draft Curriculum for Supervisor Training

Ms. Walmsley explained that MFT Interns and Associate Social Workers (ASW) are required by law to gain supervised hours of clinical experience to qualify to sit for their prospective licensure examinations. Clinical supervision is one component in developing an individual's competency to become licensed as an MFT or LCSW. She felt that people were struggling with exams because they were not receiving adequate supervision. The quality of supervision needs to be enhanced in the expectations.

Ms. Walmsley introduced Gary Henderson, MFT and Michael Brooks, LCSW.

Mr. Henderson and Mr. Brooks worked with Ms. Walmsley on the Supervision Workgroup.

Mr. Henderson provides supervision in a private practice setting and conducts supervision courses to supervisors who work in a variety of employment settings. Mr. Henderson commended the Board for stepping up to the plate with regards to supervision. He stated that the quality and content of supervision has never been addressed. The workgroup was charged in developing a supervision plan that is broad enough to allow for specific types of environment settings, yet inclusive enough to cover the materials that were considered competent for the clinical community for MFTs and LCSWs. The workgroup researched supervision literature from NASW, California Association of Marriage and Family Therapists (CAMFT), and the American Association for Marriage and Family Therapy (AAMFT), to name a few. The workgroup developed a supervision outline, and it was presented to a few groups. Mr. Henderson conducted a 6-hour supervision workshop to MFTs and LCSWs in the private sector, and another 6-hour workshop in the public sector. Feedback was received from both training courses.

Mr. Henderson stated that this outline will hopefully give supervisors and supervisees clear expectations of what is expected of a supervisor. There is a lot of misinformation and fears concerning supervision. This outline will elevate some of the fears, and may attract more competent licensees into supervision. The workgroup did not create anything new that did not already exist.

Mr. Brooks is a member of the American Board of Examiners in Clinical Social Work and assisted in the development of publications: *Clinical Supervision: A Practice Specialty of Clinical Social Work* and *Professional Development and Practice Competencies in Clinical Social Work*. Mr. Brooks stated that the charge from the Board is that the supervisees need to know what to expect from a supervisor, and the supervisors need to know what the expectations are and how to meet the expectations. The workgroup's goal was to compile information, make it definable, and make it available.

Ms. Walmsley stated that the workgroup compiled a list of suggested guidelines. One goal of supervision is to prepare people to practice independently. If they are not being prepared to practice independently, sufficiently by their supervisors, they will not pass the exam or will struggle to practice independently. Ms. Walmsley added that this is not a mandated course. The workgroup looked at the examinations, the expectations of both professions, and the training that people should be expected to get. And the workgroup came up with the suggested guidelines.

Ms. Maggio stated that staff evaluators field questions daily from supervisees and supervisors. Staff attended the pilot program that Mr. Henderson presented to Placer County agencies, and staff interacted with the individuals who provide supervision. Many of those calls are from people who want to become supervisors and want to know what they need to do. Many of the callers are licensees who have already taken a supervision course, and are calling to ask, "How do I become a supervisor?" Many of the licensees who want to help their profession are not getting information they needed from these courses. Staff heard the concerns of the supervisors, such as the shortage of supervisors, issues of working in agencies and having enough time to work with supervisees, and the paperwork.

Ms. Walmsley explained that many supervisors do not know the details of the paperwork, and how to complete the paperwork. That is a suggested guideline. Ms. Walmsley plans to take the AAMFT course and hopes to incorporate what she learns into the suggested guidelines.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists (CAMFT), asked how this course was intended to be used. With a course description, it appears that this is intended to be more than a model, a recommendation, or a suggestion. It appears that it is to become a standard. She is also concerned about the use of various models: AAMFT Approved Supervisor, CAMFT Certified Supervisor, Berkeley's Supervision Program, and other models. All of the models deliver in a different manner, all of which are good in their own perspective. There are also the differences between the professions. Clinical social work has a 15-hour course that the law specifies certain content that must be taken in advance. The MFTs are required to get 6 hours every two years. Another concern is that this model does not exist in any other way.

Ms. Riemersma stated that she appreciates the work put into this; however, this is a unique approach by the Board. In the development of something new, the Board allows the opportunity for the public to participate, and this was not handled in that manner. Ms. Riemersma wants the public involved as it is being developed, rather than putting this

out for consideration. She stated that she is still not sure what the intent or purpose of this is.

Ms. Riemersma liked the brochures informing supervisees of the role of the supervisors. She also reminded the Board regarding its surveys of supervisees, which reflected positive results about the value of supervision they received.

Mr. Riches responded to Ms. Riemersma's concerns. He stated that supervisees give the Board a lot of positive feedback about supervision; the surveys indicate that they have positive experiences. The Board receives a lot of feedback from the supervisors who are mystified about what they should be doing. There were no common understandings about expectations and how supervisors should operate. He explained that the goal is to stimulate the community to arrive at that common understanding about supervision experiences. He explained that we are at the beginning, and trying to figure out what is the irreducible minimum. There are different professions and supervision in different settings; but there are going to be basic things that ought to occur in any supervision relationship, and that is what the workgroup is trying to identify. The workgroup is trying to identify it in a manner that is respectful to the fact that there are different certification programs for supervisors, different schools of thought about supervision, and distinct professions to address. The charge was to find the irreducible common minimum that is about what learning experience looks like. Learning experience needs to contain certain types of information regardless of what the profession or setting is going to be. Mr. Riches also emphasized that this was brought to a committee meeting last year and an initial draft was presented. The committee received some comments, which was incorporated.

Mr. Riches added that supervision is a learning process, and it ought to be structured as a learning process. Mr. Riches agreed that this is odd compared to how things are usually approached, but that was driven by a problem that is not a typical problem for the Board. This is not a mandate, and it is not intended to be a mandate. The intent was to stimulate discussion with the professions with what the irreducible minimums ought to be, and some clarity on what the supervision relationship should look like.

Olivia Loewy, Executive Director of the American Association for Marriage and Family Therapy (AAMFT) California Division, asked if this is a course as it was presented, or is it a set of guidelines for what may be included in a future course.

Mr. Brooks responded that Mr. Henderson presented a course that he would deliver based on those guidelines. Somebody else could develop a course and use those guidelines. It is a tool to use to think about the elements that could go into a good supervision course – it is not intended to dictate the content and how the content should be presented.

Ms. Loewy noted that the material stated it was a course outline, but instructional objectives were missing. She was concerned with the implication that supervision of MFTs and social workers were interchangeable and can be covered in 6 hours of one course. Supervisors of MFTs need 6 hours, and social workers need 15 hours; it does not make sense. Additionally, it is important when supervising MFTs to cover those areas that train and promote a person to work as an MFT, and that is not general – it is very specific. That is a way of promoting and maintaining the profession. Ms. Loewy added that perhaps there is a place for a prerequisite or two types of courses: a course in basic training that is covered by the outline and a course that is in depth on how to supervise.

Geri Esposito, Executive Director of the California Society for Clinical Social Work (CSCSW), agreed with Ms. Riemersma. Ms. Esposito understood from the prior meeting that these were parameters, which she is comfortable with. The choice of language

included the word “shall” repeatedly. Ms. Esposito stated that clarification on what the Board wanted to convey with the guidelines would have made the document less misunderstood.

Catherine Wexler, Phillips Graduate Institute, stated that her understanding of the Board was not education, and that is not the Board’s mandate. This is a very specific piece of curriculum, and it seems as if the Board is getting into the education business. The one very important purpose of the guidelines is to motivate more people to become supervisors. A course like this may de-motivate rather than increase the number of people willing to supervise. Most people who are supervising in an agency or community organization, they need to do supervision based on the requirements of that agency.

Mr. Riches addressed several points: 1) The Board conducted a pilot test for a reason. It was clear that the licensees came out feeling more comfortable about their roles as supervisors. 2) This is not a mandate. 3) Respectful of the diverse populations, the diverse practice settings, and the diverse professional affiliations, there are irreducible minimums that need to take place in a learning environment. Mr. Riches added that people could take what they want from the guidelines if it is helpful.

Ben Caldwell, AAMFT California and Alliant International University, expressed concern that this was both developed and pilot tested before receiving external input.

Mr. Riches stated again that this was brought forth last year at a committee meeting. Mr. Henderson was present at that meeting, and a lot of feedback was received and incorporated.

Mr. Caldwell stated that if the BBS is a regulatory and enforcement body, and BBS puts this out as a recommended supervision course, people would see this as mandatory. He also stated that the BBS has not traditionally been in business of making polite recommendations.

Ms. Maggio responded that amended language was set out on the table prior to the start of the Board meeting. It is no longer called “Recommended Guidelines.” It is now called “Suggested Guidelines.” Also, the words “shall” were changed to “should.”

Mr. Caldwell stated that this does not alleviate the problem. He referred to the memo stating that currently there is no accurate way to measure the quality of supervision that interns and associates receive. The course objectives listed are shortened versions of what is in the course outline. The course objectives are not written in a way in which they can be demonstrated as learning outcomes, and doesn’t solve the problem of determining how well the course has worked in training a supervisor. As for the resources listed, it is very social-work heavy. There is a substantial amount of literature in MFT supervision, and Mr. Caldwell would be happy to contribute resources.

Mr. Riches and Ms. Walmsley accepted Mr. Caldwell’s offer to provide literature in MFT supervision.

Dr. Russ suggested taking this back to the Policy and Advocacy Committee, and in the interim, invite written comments. He also had some concerns with the bibliography. Dr. Russ suggested more discussion on this.

VII. Executive Officer's Report

A. Budget Update

Mr. Riches reported that although it is a troubling year from the general fund perspective, it is a good year for BBS fund. The Board advanced three Budget Change Proposals (BPC) that were approved. The budget includes two investigative analyst positions for the Board's enforcement unit.

Mr. Riches reported that the customer satisfaction surveys have consistently articulated a demand for more hands on help navigating the licensure process. The budget includes an additional position in the Board's licensing program to improve customer service. The position will focus on responding to applicant inquiries related to licensing processes and requirements.

The budget includes \$200,000 in added Mental Health Services Act (MHSA) funding for hiring consultants in public mental health and psychometrics to advise the Board on aligning current programs and policies with the treatment model proposed in the MHSA.

Mr. Riches provided clarification regarding the Governor's Executive Order to implement a hiring freeze and 1 1/2% reduction. That order was directed toward general fund agencies. BBS does not receive general fund monies; therefore the executive order does not affect BBS.

At the November Board meeting, Mr. Riches reported that the budget projections were tight. He outlined measures that would be taken to address that situation. Those measures were implemented. The projections reflect about a \$125,00 year-end reserve. The projections improve every month.

Ms. Roye asked if staff budgeted sufficiently for benefit costs. She also noted the budget reduction in attorney general costs, but want to know why the budget for the administrative hearing costs was increased.

Mr. Riches replied that those numbers are estimated at the beginning of the year. The attorney general expenses are way up. There are some offsetting expenses on the exam administration side that is washing it out. There is flexibility to offset expenses in other areas. There are significant increases in enforcement activity.

Ms. Roye asked if the additional workload and costs are reflected in the budget request for next fiscal year. Mr. Riches replied no. He explained that the state budget released in January was constructed last August. The turn around time to cycle increases in and out of programs is about an 18-month cycle. Right now, staff is looking at the 2009-2010 fiscal year. BBS lives in three budget years at a time: last year, current year, and next year. He stated that for 2008-2009, the attorney general line will be much in line with this year's allocation.

Ms. Roye noted that the external contracts line exceeds allotment by 4 times, and the plan is to exceed it. She suggested budgeting additional dollars in that line item so that staff does not have to go back to seek allocations.

Mr. Riches responded that most of those contracts will be expiring in 2008-2009 fiscal year. The allocations are made by the Department of Finance, and in order to increase them, we have to go through a formal BCP.

B. Quarterly Licensing Statistics

Dr. Russ commended staff on the numbers and processing times, stating that the numbers and turn-around time are astounding.

C. Personnel Update

Mr. Riches reported on organizational changes. For the first time, the BBS has a management team in place. The Board has long been limited by an inadequate management structure. A few years ago, the Board had only the executive officer and an assistant executive officer to manage and supervise an office staff of 30. It is difficult to support staff and poses a big challenge for supervision in an environment of changing and improving outcomes. There is now a manager over the license, exam and cashing units. There is a manager over the enforcement program that continues to grow.

Ms. Maggio's role will change significantly with the new management team in place. She is going to take a role in the exam review and working with the exam unit. She is also responsible for directing staff work on the strategic objectives adopted in the Board's strategic plan.

D. Mental Health Services Act Coordinator's Report

Christy Berger received a promotion and is the Board's new fulltime MHSA Coordinator underwritten by the Department of Mental Health (DMH). Ms. Berger's job is to serve as the Board's specialist regarding the MHSA and its impact on and interrelationship with Board programs, to act as liaison between the Board and DMH, and to perform other functions relating to the MHSA. Her report will be included in future meetings.

E. Future Board Meetings

Mr. Riches reported that the Department of Consumer Affairs (DCA) is requesting a change in date for the November Board meeting. The Director is working to develop a "board conference" where each board and bureau in DCA will hold its meeting at a common location over a 3-5 day period. In addition to the board meetings, the conference will feature training and networking opportunities for board members. The conference is designed to highlight the breadth of work done by DCA boards and bureaus and provide opportunities for board members from various boards and members of the administration to meet. The conference is slated to occur the week of November 17th in the Los Angeles area. The tentative schedule has the BBS meeting on Tuesday, November 18th.

In an effort to meet once a year in parts of the state that the Board normally does not attend, the August Board meeting will be held in Eureka.

The next Board meeting is scheduled on May 29-30, 2008 in Sacramento.

F. Miscellaneous Matters

There were no miscellaneous matters to report.

VIII. Marriage and Family Therapist Education Committee Recommendation to Sponsor Legislation to Revise Education Requirements for Marriage and Family Therapists

Dr. Russ requested from the Board to support approval of the work of the Committee and move forward in the legislative process.

The Committee is proposing specific curricular changes for MFT intern registration and licensure. The proposal includes increasing the 48-semester unit requirement to 60 semester units. This will put some burdens on some schools and students. The needs and the demands

of the field have expanded to allow MFTs to move into various fields. There is a lot of support from the institutions to implement this.

In addition, there is the integration of the Recovery Model. The Recovery Model is an issue of working with people. It is the model that DMH says is essential for the agencies it oversees and contracts with. People in mental health need to understand it and know it. It is an additional way of thinking and will be a challenge to the institutions.

The Committee encouraged and infused throughout the curriculum the issues of cultures and socioeconomics. One of the things left unresolved is that there are MFT requirements that do not demand supervised meetings with families. The Board will have that conversation and talk about creating incentives for that.

Mr. Wong, NASW, asked if there is any language change to allow for regional accreditation rather than Western Association of Schools and Colleges (WASC) accreditations. Dr. Russ replied that there is a change allowing the use of accrediting agencies that are recognized by the Department of Education.

Ms. Riemersma, CAMFT, supports the proposal; however she requested an amendment to Section 4980.02, to recognize these sections of law that are now becoming the education sections.

Donna DiGiorgio moved to sponsor legislation to update the MFT educational requirements proposed. Renee Lonner seconded. The Board voted unanimously to pass the motion (8-0).

Dr. Russ thanked the public for discussing this and developing these ideas.

Mr. Riches stated that Senate Bill 1218 authored by Senator Lou Correa is in print and available on the legislative website.

IX. Policy and Advocacy Committee Report

A. Recommendation #1 – Sponsor Legislation Recognizing Schools Accredited by the Transnational Association of Christian Colleges and Schools

Ms. DiGiorgio reported that current law recognizes three separate entities for approving/accrediting marriage and family therapy degree programs: WASC, Commission on Accreditation of Marriage and Family Therapy Education (COAMFTE), and the Bureau of Private Postsecondary and Vocational Education (BPPVE). BPPVE became inoperative in July 2007. The BBS has been asked to add the Transnational Association of Christian Colleges and Schools (TRACS) as one of the accrediting bodies. The Committee recommended that the Board sponsor legislation to recognize TRACS accreditation.

Ms. Riemersma, CAMFT, stated that CAMFT is in favor of the proposal.

Karen Roye moved to sponsor legislation to recognize TRACS accreditation. Judy Johnson seconded. The Board voted unanimously (8-0) to pass the motion.

B. Legislation Update

Mr. Riches presented a list of legislation for review. The list contains legislation that the Board will introduce in the 2008 legislative session.

C. Regulation Update

Mr. Riches presented a list of pending rulemaking.

Mr. Caldwell, AAMFT California Division, referred to the regulatory proposal Title 16, CCR Sections 1833.1 and 1870, Supervisor Qualifications. He stated that since that requirement has changed, he suggested removing the brochures in the board meeting packet.

Kristy Schieldge stated that the brochures have been updated to reflect the regulatory changes.

X. Update on Proposed Legislation and Regulations Regarding Acceptance of Degrees Granted by Institutions Approved by the Bureau for Private Postsecondary and Vocational Education

Mr. Riches reported at the November Board meeting, the Board directed staff to: 1) to initiate rulemaking to extend recognition, and 2) to sponsor legislation granting the Board the authority to recognize approving accrediting bodies by regulation. That bill has been introduced and will be heard on March 11th at the Business and Professions Committee meeting.

The larger reform discussions continue. The latest is that there will probably be a formation of a legislative conference committee. This is a committee between the two houses that will meet and produce a report, and seek approval.

Ms. DiGiorgio asked what the timeline is for resolving this issue. Mr. Riches responded that there is a statutory extension that gets the BBS through the end of this year. His expectation is that if larger progress is not made, there may be another effort to extend this out one more year.

XI. Public Comment for Items Not on the Agenda

No public comments were made

XII. Suggestions for Future Agenda Items

No suggestions were made.

The board meeting adjourned at 3:16 p.m.

BOARD COMMITTEE MEETINGS

XIII. MFT Education Committee

Members Present

Ian Russ, Chair, MFT Member
Gordonna DiGiorgio, Public Member

Staff Present

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Christina Kitamura, Administrative Assistant

Members Absent

None

Ian Russ, Committee Chair, called the meeting to order at 3:31 p.m. Christina Kitamura called roll, and a quorum was established.

A. Review and Approval of December 7, 2007 Meeting Minutes

Donna DiGiorgio moved to approve the December 7, 2007 meeting minutes. Ian Russ seconded. The Committee approved the motion.

The MFT Education Committee adjourned at 3:32 p.m.

XIV. Consumer Protection Committee

Members Present

Judy Johnson, LEP Member
Elise Froistad, MFT Member
Victor Perez, Public Member
Ian Russ, Chair, MFT Member
Joan Walmsley, Vice Chair, LCSW Member

Staff Present

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Christina Kitamura, Administrative Assistant

Members Absent

None

Judy Johnson, Committee Chair, called the meeting to order at 3:32 p.m. Christina Kitamura called roll, and a quorum was established.

A. Review and Approval of the October 5, 2007 Meeting Minutes

Victor Perez moved to approve the October 5, 2007 meeting minutes. Joan Walmsley seconded. The Committee voted unanimously to pass the motion.

The Consumer Protection Committee adjourned at 3:33 p.m.

XV. Planning Committee

Members Present

Judy Johnson, Chair, LEP Member
Ian Russ, MFT Member

Staff Present

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Kristy Schieldge, Legal Counsel
Christina Kitamura, Administrative Assistant

Members Absent

D'Karla Leach, Public Member

Judy Johnson called the meeting to order at 3:33 p.m. Christina Kitamura called roll, and a quorum was established.

The items were taken out of order with C. Strategic Plan Update provided first.

C. Strategic Plan Update

Mona Maggio gave an update on the strategic plan's goals and objectives and the status of each team. The Champions for each objective have completed the first draft of their respective team's reporting document, which contains a work action plan (WAP) that details how they are going to achieve and meet the objective. The report will be given to the Strategic Planning Counsel (SPC), composed of 10 staff and management members, and chaired by Christy Berger. The SPC oversees the direction of the strategic plan.

The first drafts are due on February 15th. Ms. Berger and Ms. Maggio will review the reporting documents and provide feedback to the Champions. The reporting documents include:

- Introduction to the objective
- Identified challenges in addressing the objective
- Significance of the objective
- Methodology
- Discussion on how the team will meet the goals
- Current status
- Work action plan

One of the challenges experienced by the teams and the SPC is the loss of some personnel and recruitment of new team members and new Champions. Ms. Maggio will have more time to work with the Champions. The next SPC meeting is scheduled for March 12th.

The goal is to have some of the Champions present their objectives to the Board its the May meeting.

Ms. Maggio addressed Objective 2.2, implement four strategies to improve the quality of clinical supervision by July 1, 2012. The work on this objective is going well with the Supervision Workgroup and the research and information gained to create a draft supervision course.

Ms. Maggio addressed Objective 3.1, implement four consumer awareness initiatives on the roles of mental health services by July 1, 2012. Sean O'Connor, the Board's Outreach Coordinator, is the Champion for this objective. Mr. O'Connor's goal is to train additional staff in outreach presentations. The presentations are much needed and have become very popular; however, they are very time-consuming. Mr. O'Connor is training two

evaluators: Jessica Upadhye, LCSW evaluator, and Michelle Eernisse, MFT evaluator. The goal was to complete 45 outreach events this year. It appears that the goal will be exceeded.

Ms. Maggio addressed Objective 4.2, 90% of BBS staff will participate in the Human Resource management plan by July 1, 2010. Paula Gershon and Steve Sodergren are in the process of setting up a "Board certification program" for staff to educate all staff in all areas of the Board and test staff on their general knowledge within the various units within the office. The anticipated date to begin the certification program is in April.

Mr. Riches stated that staff has expressed the desire to have better knowledge of the organization and the ability to communicate across organizational lines. It is also important at the management level to understand each unit, to spend time in each unit and experience what each unit does. This gives management more empathy about the people going through the Board's processes and what that means on a subjective level.

Ms. Maggio addressed Objective 2.4, implement six strategies to improve the quality of treatment for co-occurring disorders by July 1, 2012. Christina Kitamura and Julie McAuliffe are the Champions for this objective. They contacted Donna DiGiorgio who has been a very good resource for them on getting some starting points, and giving them opportunities to ask questions. Some questions they are asking are how can the Board assist in education for licensees in co-occurring disorder, and is that the Board's place.

Mr. Riches stated that from an organizational development standpoint, part of the strategic planning process is developing the Board objectives and developing tangible outcomes. There has also been a conscious effort on our part on how to implement that. It has been challenging, but this is very much about staff development and leadership development. We have turnover and aging workforce. We have a lot of very long-term employees and a lot of new employees. One of the things management has to do is to identify the individuals who have the interest, skills, and capability to progress and move up. This implementation effort is staff intensive. This is a good way to see who has the aptitude and interest, and the skill set needed to move up, and to develop a bench of good internal candidates so they are prepared to move up when the Board has openings.

A. Review and Possible Action on Draft Board Self-Assessment Instrument

Mr. Riches reported on Objective 1.7, increase board appointees' effectiveness index by 10% by July 1, 2012. At its November 2007 meeting, the Board approved a methodology for assessing board member effectiveness that included ongoing self-assessment. The self-assessment is focused on the degree to which the Board's activity as a governing body is exemplified.

One of the challenges was determining what it means to be an effective board member. Without a "job description," there is no obvious answer. Some of the points talked about were: participation in public meetings, preparation, and engagement, collectively respecting the individual members and the individual members respecting the Board and its processes.

The best way to operationalize the question is to ask, "Are we fulfilling our values commitment?" Those values are articulated in the BBS Way:

Be a person of *integrity*.
Be *dedicated* and *professional*.
Serve with *excellence*.

Staff developed a range of questions based on how board members would exhibit the BBS Way in its public conduct. Accordingly, each question is listed according to the value it reflected. Four questions were drafted under each value. Staff is requesting feedback as to which four questions per value fit best or suggestions for alternate questions.

Integrity

Staff drafted four questions. No comments were made.

Professionalism

Ms. Johnson recommended omitting question 1: Does the Board listen openly to all points of view? This question is subsumed in question 2: Does the Board openly accept and respond to constructive criticism? She also recommended omitting question 4: Does the Board engage in constructive self-evaluation?

Ms. Johnson stated that the following questions were excellent:

2. Does the Board openly accept and respond to constructive criticism?
3. Does the Board respect and value the roles of all professions and consumers?
5. Does the Board hold its members accountable for supporting organizational norms and values?
6. Does the Board hold the executive officer accountable for effective staff operations and implementing Board policy?

Ian Russ agreed with Ms. Johnson's recommendations.

Janlee Wong, Executive Director of the National Association of Social Workers (NASW) California Chapter, asked how the Board measures its knowledge base. All of the board members should have a general knowledge in policy making. One way to evaluate that is by testing the board members. He stated there should be some understanding of the recovery model among all of the board members.

Dedication

Ms. Johnson stated that questions under "Dedication" address issues such as holding people accountable for having a knowledge base and doing their homework with respect to the areas of expertise that everyone brings to the Board.

1. Is the Board prepared to address the issues on each agenda?
2. Does the Board respect and support the priorities of each board member?
3. Does the Board actively seek information and expertise from external sources?
4. Does the Board respond to public demand to address issues of concern?

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists (CAMFT), stated that staff did a good job as a start to create a tool to evaluate the effectiveness and operation of the Board as a whole. She encouraged the Board to work with it for a while and change it as needed.

Dr. Russ asked the audience if the discussion reflects that there is a lack of general knowledge and if the community feels that there is a lack of knowledge on the Board.

Ms. Riemersma expressed that it is refreshing to see the Board is knowledgeable about what it is doing, and where it is not knowledgeable, the Board seeks that knowledge.

Olivia Loewy, Executive Director of the American Association for Marriage and Family Therapy (AAMFT) California Division, stated that this a good way to provide guidelines and awareness for board members in what they are supposed to do as a Board.

Heather Halperin, University of Southern California, School of Social Work, expressed that it is enlightening that the Board is willing to look at itself and is very active and interested in making the community a part of its processes. She asked how the Board evaluates itself if there is a lack of presence from other members.

Mr. Riches explained that there are objective elements such as attendance, submitting enforcement votes timely, and participation in Board outreach efforts and community outreach efforts. These are easily quantifiable and will be wrapped in through this instrument. This instrument is intended to target the issue of the Board collectively functioning well.

Charlene Gonzales, Department of Child and Family Services, expressed that she is impressed by the openness of the Board, and it is a less scary being part of the process. She feels that the processes are limited towards the licensed school psychologist (LEP) profession, and the licensed clinical social worker (LCSW) profession is seldom discussed.

Dr. Russ responded that there will be a lot of LCSW discussion this year, with the creation of the LCSW Education Committee.

Ms. Johnson responded that there was a full discussion regarding LEPs at the Fresno board meeting. Mr. Riches added that there was a comprehensive rewrite of the LEP statutes.

Mr. Wong asked if there is a method to determine if board members have knowledge regarding the strategic plan goals and what those measurements are. Ms. Johnson responded that this is addressed under "Excellence."

Service

Staff drafted four questions. No comments were made.

Excellence

Ms. Johnson recommended omitting question 5: Is the Board an effective policymaking body? Question 5 is redundant with question 3: Is the Board open to adapting its policies and practices based on changes in its environment?

Ms. Johnson recommended omitting question 7: Is board member interaction healthy and respectful? This is addressed under "Professionalism."

Dr. Russ agreed with Ms. Johnson.

The four questions that were most effective were:

1. Does the Board exhibit a proactive approach to understanding and addressing public needs?
2. Does the Board exhibit responsiveness to the challenges presented by public and professional diversity?
3. Is the Board open to adapting its policies and practices based on changes in its environment?
4. Does the Board exhibit commitment to the priorities established by its strategic plan?

Mr. Riches stated that staff will bring this to the Board at its meeting May for approval, and plan to administer the survey after the August board meeting.

Mr. Riches briefly reported on his upcoming trip to Las Vegas to attend the conference of the American Society for Business and Behavioral Sciences. He will present a paper that he co-authored with Dr. Lindle Hatton about the aspects of the Board's current planning process, which will be submitted to their journal for possible publication. Dr. Hatton and Mr. Riches may be writing future papers in this effort.

Dr. Russ read the paper and expressed that it is an excellent paper that introduces what the Board is doing. It moves the Board forward in the mission to be exemplary in how boards should operate. It is a model.

B. Brainstorming Session on Improving Board Member Participation in Outreach Events

Ms. Maggio reported that as a component of Objective 1.7, there is an opportunity for board members to participate in outreach events in community engagements and in the mental health communities, and in regularly scheduled board meetings and board activities.

Ms. Johnson asked if board members are notified of outreach events, do the members know when there are events, and are there extra events that members can attend.

Ms. Maggio responded that notification is sent to the board members informing them of events that staff will be attending.

Ms. Maggio questioned if board members are aware of other outreach events, or if there were events that the community would like to invite a board member to attend.

Dr. Russ would like to survey the board members and ask if they are:

- Involved in the community,
- Attending events for professional organizations, and
- Attending events where staff is requesting their presence.

Ms. Johnson recommended keeping a log of extended events where the board member represented the Board, attended as a representative of the Board, and/or getting involved in the dialogue.

Mr. Riches asked what is a useful way to share information to about the organized outreach events. What would be an effective way to stimulate participation?

Dr. Russ suggested:

- Sending a general announcement of the events,
- Requesting participation of a board member who is logistically/geographically close to the event, and
- Sending a general announcement to all board members for events not geographically convenient to any of the members.

Ms. Johnson suggested sending the same notifications to all board members and provide a tool to document all the events that were attended.

Kristy Schieldge warned of "Board" discussions when at the events, as it violates the Public Meeting Act.

No further discussion.

The Planning Committee adjourned at 4:34 pm.

Friday, February 22

FULL BOARD OPEN SESSION

Members Present

Ian Russ, Chair, MFT Member
Elise Froistad, MFT Member
Judy Johnson, LEP Member
Karen Roye, Public Member
Renee Lonner, LCSW Member
Victor Perez, Public Member
Joan Walmsley, Vice Chair, LCSW Member
Gordonna DiGiorgio, Public Member

Staff Present

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Christy Berger, MHSA Coordinator
Kristy Schieldge, Legal Counsel
Christina Kitamura, Administrative Assistant

Members Absent

Victor Law, Public Member
D'Karla Leach, Public Member
Rita Cameron Wedding, Public Member

Guests

Norman Hertz, Examination Consultant
Nancy Linn, OER Staff Supervisor
Sonja Merold, Chief of OER

Ian Russ called the meeting to order at 8:34 a.m. Christina Kitamura called roll, and a quorum was established.

FULL BOARD CLOSED SESSION

Dr. Russ closed the meeting to the public at 8:35 a.m.

XVI. Pursuant to Government Code Section 11126(c)(1) Regarding Administration of Licensing Examinations for Marriage and Family Therapists, Licensed Clinical Social Workers and Licensed Educational Psychologists.

The board meeting adjourned at 11:51 a.m.

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 13, 2008

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Association of Social Work Boards Licensure Examination

Background

In February 2006, the Board of Behavioral Sciences (Board) received a letter from Roger A. Kryzanek, MSW, LCSW and President of the Association of Social Work Boards (ASWB). The purpose of Mr. Kryzanek's letter is to ask the Board to consider rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB's national examination.

In February of 2007, Mr. Kryzanek made a presentation to the Board and the Board decided to audit the ASWB exam. Subsequently, the board engaged Applied Measurement Services, LLC to perform a psychometric audit of the ASWB exam for licensure as a clinical social worker and produce a report to the board to assess whether the examination meets California legal requirements for licensure examinations. Board members Renee Lonner and Joan Walmsley were assigned to assist in the audit process. Weather prevented the Board's team from completing its site visit with ASWB's exam vendor in Iowa; however, we are presently working to have both board members review the current examination in an alternate venue. Applied Measurement Services, LLC has completed its review and Dr. Tracy Montez will be presenting the results of the audit at this board meeting.

In February of 2008, the Board formed the Examination Committee to engage in a holistic review of the board's examination program that is expected to begin this summer. The Committee will conduct a comprehensive review of our examination program (from subject matter, types and timing of examination(s), etc.) in a public meeting process designed to solicit input from the public and professional communities. The Committee will address cross-cutting issues for all examinations but also allocate time specifically for each of the three examination programs (marriage and family therapy, clinical social work, educational psychology).

Staff Recommendation

Staff recommends that the board take three specific actions at this time.

- First, the Board should direct staff to work with ASWB to ensure that a significant sample of California LCSWs participate in the ASWB occupational analysis process that it is scheduled to begin this year.

- Second, the Board should specifically direct the Examination Committee to consider the ASWB examination in its work as it relates to licensure for clinical social work. Both of these processes are likely to conclude in the next 12-18 months. These two items are recommended because, taken together, they address the most significant issues presented by the audit report and the larger policy question regarding the structure of our examination programs.
- Third, the Board should direct staff to engage ASWB in discussions regarding the following items identified in the audit report:
 1. Update ASWB materials -- The ASWB should take steps to update association- and examination-related materials to better reflect current policies and practices. These steps should be reasonable given practical and fiscal constraints.
 2. Use more and diverse subject matter experts -- The ASWB should make every effort to use a variety of subject matter experts as participants in the practice analysis, as item writers, as passing score study participants, members of the examination committee and board of directors. The ASWB should discourage individuals from being too closely tied to all phases of the ASWB examination program (i.e., other than ASWB administrative staff).
 3. Explore, and implement as needed, additional security strategies at computer-based testing centers -- The ASWB should explore additional security strategies to protect the integrity of the examination process. Strategies determined to be practical and fiscally responsible should be implemented to prevent (or, at the minimum, discourage) both minor and major security breaches.
 4. Development and use of task and knowledge statements -- The ASWB and ACT should consider writing task and knowledge statements in greater detail to provide depth and specificity. Further, ASWB and ACT should release the knowledge statements as part of the Clinical exam content outline, and the linkage to the task statements. One of the purposes of an examination plan or content outline is to provide information about a profession. Specifically, the purposes of the LCSW examination plan include revising or establishing regulatory policies, assisting with curriculum development, preparing candidates for the examination, and developing the licensure examination. The BBS would expect to use the ASWB clinical exam content outline to meet similar purposes.
 5. Availability of examination data -- The ASWB should release confidential examination data to the BBS upon request, given parameters are established to maintain the confidentiality and security of the data. Examples of requested data would be *monthly* cumulative examination statistics for California candidates and *annual* technical reports reviewed by a qualified psychometrician representing the BBS.

History

The Board was a member of ASWB from October 1991 through March 1999, and required the ASWB Clinical level examination, along with a state-constructed oral examination for licensure of clinical social workers. However, around 1998, the Board and the Department of Consumer Affairs, Office of Examination Resources (OER) began having concerns regarding the ASWB examination. These concerns included:

- The practice analysis conducted by ASWB did not include a representative number of licensees in California, just 16 participants.
- The sampling of participants in the practice analysis did not include demographics representative of California's population.
- The pass rate for California's first-time examination participants was very high at 89%.

Based on these concerns, and the results of a new California occupational analysis, the Board determined that there was a need for a state-constructed written examination. The new California written examination was administered beginning in late Spring 1999.

About ASWB

Currently, ASWB is comprised of social work regulatory boards in 49 states, the District of Columbia, the Virgin Islands, and seven Canadian provinces. Presently, California is the only U.S. state that is not a member of ASWB and not participating in its examination program. ASWB contracts with ACT, Inc. to administer its examinations at test centers on or near college campuses, and also for psychometric and other support services.

ASWB last completed a practice analysis in 2003 which included 75 surveys returned by California social workers, for 2.1% of the total responses. ASWB has five examination categories for social work, each consisting of 170 items (including 20 pre-test items). All examinations are administered over a four-hour period and cost the candidate \$175, and are as follows:

- *Associate* – Appropriate for paraprofessional social workers. This level uses the Bachelor's examination with a lower pass point.
 - *Bachelors* – Appropriate for those who hold a Bachelor's degree in Social Work.
 - *Masters* – Appropriate for those who hold a Master's degree in Social Work (MSW).
 - *Advanced Generalist* – Appropriate for those who hold a MSW with a minimum of two years of post-degree experience in non-clinical practice.
 - *Clinical* – Appropriate for those who hold an MSW with a minimum of two years of post-degree experience in clinical practice. This would be the examination evaluated for possible use in California for LCSWs.
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A Comprehensive Assessment of the
Association of Social Work Boards
Clinical Exam

Performed for the
California Department of Consumer Affairs
Board of Behavioral Sciences

Performed by Applied Measurement Services, LLC

May 2008

PUBLIC REPORT

Executive Summary

Applied Measurement Services (AMS), LLC completed a comprehensive analysis and evaluation of the documents provided by the Association of Social Work Boards (ASWB) and ACT. The procedures used to establish and support the validity and defensibility of the ASWB Clinical exam program components (i.e., practice analysis, examination development, passing scores, test administration, examination performance, and test security) were found to meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* and *Business and Professions Code Section 139*.

Although issues of concern are documented, validity is not an all-or-none concept. Rather, validity is a process of accumulating evidence. The ASWB and its psychometric partner ACT have provided a sufficient degree of evidence to support making valid decisions about entry-level practice performance from the Clinical exam.

The ASWB Clinical exam program has several strengths beyond traditional licensure examination programs that should be highlighted. The following are examples of exemplary actions that support validation efforts:

- completing a comprehensive passing score study;
- using Item Response Theory (IRT) to construct and equate exam forms, and to monitor exam performance;
- using Differential Item Functioning (DIF) to monitor item bias and adverse impact;
- performing readability studies to measure exam reading level;
- using a qualified psychometric vendor who conducts extensive analyses and provides the ASWB with performance goals and recommendations to further strengthen the exam program; and,
- conducting ongoing research to improve the exam program and associated processes.

Given these strengths, there are points that the BBS should consider before rendering a decision to adopt the ASWB Clinical exam. Minor points include the following: (a) role of Exam Committee members and Board of Directors, (b) multiple uses of computer-based testing (CBT) centers, and (c) discrepancies in information presented in ASWB publications.

Major points include the following: (a) availability and confidentiality of Clinical exam program data and information, and (b) differences between the Board of Behavioral Sciences (BBS) Licensed Clinical Social Worker (LCSW) examination plan and the ASWB Clinical exam content outline/test blueprint.

These points are discussed in greater detail in Chapter 10: Overall Conclusions.

Chapter 1: Introduction

Licensing boards and bureaus within the California Department of Consumer Affairs are required to ensure that examination programs being considered for use in the California-licensure process are in compliance with psychometric and legal standards. The public must be reasonably confident that an individual passing a licensing examination has the requisite knowledge and skills to competently and safely practice in the respective profession.

In October 2007, the Department of Consumer Affairs Board of Behavioral Sciences (BBS) contracted with Applied Measurement Services (AMS), LLC to conduct a comprehensive assessment of the Association of Social Work Boards (ASWB) Clinical exam. The full contract concludes June 30, 2008.

The ASWB was incorporated in 1979 by representatives of state licensing entities and was known as the American Association of State Social Work Boards. In 1999, the name was shortened. By 2005, membership included boards from 49 states (exception is California) and several Canadian provinces (ASWB, 2005; <http://www.aswb.org>).

The ASWB is led by an eight-person Board of Directors which includes the president, either a president-elect or a past president, secretary, treasurer, and four directors at large. Five of the eight board members must be licensed social workers and at least one director must be a public member and one must be a member board staff (ASWB Bylaws, Article VII.). Elections for officers, members of the Board of Directors, and members of the ASWB Nominating Committee occur at the Annual Meeting held in the fall. Each member board is represented by one delegate and has one vote in business before the Delegate Assembly. Voting by proxy is not permitted (ASWB Policy Manual, p. IV-1).

The mission of the [ASWB] is to assist social work regulatory bodies in carrying out their legislative mandates, and to encourage jurisdictional efforts to protect a diverse public served by social workers who are regulated through common values, ethics, and practice standards . . . (<http://www.aswb.org>).

According to the ASWB, ACT, Inc. provides psychometric support for the ASWB examinations. ACT is an independent, not-for-profit organization that provides more than a hundred assessment, research, information, and program management services in the broad areas of education and workforce development (www.act.org/aboutact).

AMS worked primarily with the ASWB through Donna DeAngelis, ASWB Executive Director, and her staff. AMS received and reviewed Clinical exam program documents provided by the ASWB and ACT. A comprehensive evaluation of these documents was made to determine whether the (a) practice analysis¹, (b) examination development, (c) passing scores², (d) test administration, (e) examination performance, and (f) test security

¹ A practice analysis is also known as a job analysis, an occupational analysis, or a task analysis.

² A passing score is also known as a pass point, cut score, or standard score.

procedures meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing (Standards)*³ and *Business and Professions Code Section 139* (see the *Examination Validation Policy*)⁴. It should be noted that since the statistical data presented in the documents were considered credible, they were not reanalyzed.

With one exception, it was not in the scope of the contract to compare the ASWB examination program to the BBS examination program. The exception was a comparative evaluation between the BBS Licensed Clinical Social Worker (LCSW) examination plan and the ASWB Clinical exam content outline/test blueprint. The purpose of this comparison was to determine if the ASWB Clinical exam measures the same knowledge and skills as the BBS LCSW examination.

³ American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). *Standards for Educational and Psychological Testing*. Washington, DC: American Educational Research Association.

⁴ California Department of Consumer Affairs. (2004). *Examination Validation Policy*. Sacramento, CA: California Department of Consumer Affairs.

Chapter 2: Practice Analysis

Standards

The most relevant standard from the *Standards* relating to practice analyses, as applied to credentialing or licensing examinations, is:

Standard 14.14

The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted. (p. 161)

The comment following *Standard 14.14* emphasizes its relevance:

Comment: Some form of job or practice analysis provides the primary basis for defining the content domain. If the same examination is used in the licensure or certification of people employed in a variety of settings and specialties, a number of different practice settings may need to be analyzed. Although the practice analysis techniques may be similar to those used in employment testing, the emphasis for licensure is limited appropriately to knowledge and skills necessary for the effective practice . . . In tests used for licensure, skills that may be important to success but are not directly related to the purpose of licensure (e.g., protecting the public) should not be included. (p. 161)

Section 139 requires that every board, bureau, commission, and program report annually on the frequency of their occupational analysis, examination validation and development. The Department of Consumer Affairs' *Examination Validation Policy* states:

Occupational analyses and/or validations should be conducted every three to seven years, with a recommended standard of five years, unless the board, program, bureau, or division can provide verifiable evidence through subject matter experts or a similar procedure that the existing occupational analysis continues to represent current practice standards, task, and technology. (p. 2)

Findings and Issues

In collaboration with ACT, the ASWB conducted a practice analysis of social work. The ASWB documented this study in the report titled *Analysis of the Practice of Social Work 2003*. The report summarizes the eight major steps of the study which was divided into three phases. This assessment report highlights relevant methodology associated with the three practice analysis phases, noting findings and issues of concern.

Practice Analysis Study – Purpose, Mechanism, and Timeframe

According to the report, the three purposes of the practice analysis were to: (a) obtain a picture of the current practice of social work from a representative sample of social workers in the U.S. and Canada via a survey; (b) compare the practices of social work in the U.S. and Canada to determine if each licensing exam could be based on the same blueprint; and, (c) update the licensure test blueprints (ASWB, 2004, p. 8). The mechanism used to achieve the stated purposes was a practice analysis survey.

The first practice analysis development meeting occurred in January 2001. The final meeting was held in February 2003, and the report was published in 2004. The Clinical exam content outline/test blueprint was implemented in May 2004.

Finding 1. The purpose, mechanism, and timeframe in which the practice analysis study was conducted are considered to be current, valid, and legally defensible. “ASWB chooses to conduct a practice analysis every 5 to 7 years” (ASWB & ACT, personal communication, February 8-29, 2008, p. 9).

Practice Analysis – Use of Subject Matter Experts, Development of Pilot Survey, and Selection of Rating Scales

For the practice analysis study, the ASWB President appointed a Practice Analysis Task Force (PATF) to provide content expertise as Subject Matter Experts (SMEs). The fifteen PATF members were selected for demographic diversity, were all licensed social workers, and were approved to participate as PATF members by the ASWB Board of Directors.

With a couple of exceptions, the same members of the PATF participated in all phases of the practice analysis study (ASWB & ACT, personal communication, February 8-29, 2008, p. 1).

Finding 2. PATF member/SME recruitment is consistent with professional guidelines and technical standards.

Issue 1. While some practice analysis methods support using a limited number of SMEs, research predominately supports using multiple and diverse SMEs during the various phases of a practice analysis to strengthen defensibility. Since the practice analysis study held several meetings, an opportunity to use different groups of SMEs existed but did not occur.

During the first pilot survey development meeting, the PATF reviewed a set of 160 task statements used on the prior practice analysis survey conducted in 1996. After working with the ACT psychometricians, the PATF group was then divided into smaller groups to review the remaining 26 pages of additional tasks suggested by social workers who completed the prior survey (ASWB & ACT, personal communication, February 8-29, 2008).

Next, an initial set of demographic items and rating scales to be included in the survey were considered after receiving an explanation from the ASWB and ACT staff as to their role in the practice analysis. Both of these pilot survey components were finalized after a number of telephone conference calls during the spring and summer (ASWB & ACT, personal communication, February 8-29, 2008, p. 2).

The final pilot survey was approved in September 2001. It was produced in both paper and web formats. The survey consisted of three sections: 15 background items, 176 task statements rated on three scales (frequency, importance, and performance expectations), and pilot survey feedback questions. The survey was distributed to a proportional random sample of 300 social workers.

Finding 3. Upon request, the ASWB and ACT clarified how the *proportional random sample* was derived. Using a database of licensed social workers who passed one of the ASWB examinations between 1998 and 2000, ACT chose a stratified random sample of 300 names and addresses for the pilot survey. The number of social workers that were sampled from each jurisdiction, including California, was proportional to the number licensed in that jurisdiction (ASWB & ACT, personal communication, April 11, 2008, p. 1).

The response rate from the pilot survey was 13%.

Finding 4. After reviewing the pilot survey responses, the PATF determined that additional response data were needed to ensure the validity of the results. To obtain the additional data, each PATF member agreed to distribute paper-based pilot surveys to a sample of social workers who met the targeted characteristics (ASWB & ACT, personal communication, February 8-29, 2008, p. 2).

Practice Analysis – Final Survey, Survey Sampling Plan and Survey Distribution

Minor revisions were made to the survey based on responses from the pilot. The decision was also made to split the survey into two forms. The decision was based on a recommendation from ACT and feedback from the pilot responses which indicated that the length of the survey made it “cumbersome” to complete. The resulting two survey forms contained 16 common or, linked items (ASWB, 2004, p. 11; ASWB & ACT, personal communication, February 8-29, 2008, p. 2).

Finding 5. AMS requested further clarification on how the sample was derived, specifically what analysis was done to support the statement that respondents statistically reflect the racial, ethnic, and cultural, gender, and geographic make-up of the profession. The ASWB and ACT explained that the demographics of the survey sample were compared to the demographics of the profession reflected by the composition of the National Association of Social Workers membership. Reference: *Who We Are. The Social Work Labor Force as Reflected in the NASW Membership* (ASWB & ACT, personal communication, February 8-29, 2008, p. 9).

Finding 6. The decision to split the survey into two forms (see Practice Analysis - Analysis of Survey Data below) and the sampling plan meet professional guidelines and technical standards.

For distribution of the practice analysis survey, a four-part mailing sequence was implemented in May 2002 to promote a good response rate. First, an “alert” letter was sent to each individual in the sample announcing the survey, its purpose, and offering a choice between two response options: a web-based survey or a paper survey. The second mailing was the survey itself and included a cover letter with instructions. A third letter was sent approximately two weeks after the survey thanking those who completed the survey and requesting those who did not to do so. A fourth letter was sent two weeks later to only those individuals who had not completed the survey again requesting their participation.

A four-digit response number prevented individuals completing both the paper-survey and the web-based survey from being counted twice. The response number also allowed certificates of continuing education to be given.

Finding 7. The four-part mailing sequence is costly, but significantly strengthens the rate of survey response. Offering continuing education credit is an acceptable strategy to increase survey completion.

Finding 8. Typically, practice analysis surveys are completed anonymously. AMS inquired about comments made given the lack of anonymity. The ASWB and ACT did not receive any specific to the lack anonymity (ASWB & ACT, personal communication, February 8-29, 2008, p. 3).

Practice Analysis – Survey Response Rates and Demographic Characteristics

After administering the practice analysis survey and collecting the data, ACT established that data quality requirements were met (ASWB & ACT, personal communication, February 8-29, 2008, p. 4), computed response rates across the licensure levels, and evaluated demographic characteristics.

As a result of the sampling plan, 4,542 total, useable surveys were completed (41.8%). Useable responses from the U.S. totaled 3,525 (40.9%). The Clinical category reported 1,808 completed and useable surveys (1,605 from U.S. and 203 from Canada; ASWB, 2004).

Finding 9. The typical U.S. Clinical respondent was between the ages of 41 to 50, Caucasian, and female. Her primary practice setting was a not-for-profit organization, providing mental health services. She worked as a direct service provider, 30 to 40 hours per week in a major metropolitan area-city (ASWB, 2004, Appendix E).

Practice Analysis – Analysis of Survey Data

Next, ACT analyzed response similarity between the forms and computed task rankings and task weights.

Analysis of Variance (ANOVA) was used to examine the items common to the two forms to determine the likelihood of similarity of response between the groups replying to one form (Form A) and the other (Form B). The data indicated the two groups were not significantly different from one another in task response, and suggests that if the respondents had rated all 176 task statements that they would have rated the task statements of the full survey similarly (ASWB, 2004, p. 18).

Finding 10. The criteria used to calculate the task rankings (i.e., respondents need to know how to perform the tasks competently at the time of licensure at the current level of practice; tasks are of high importance; and, tasks are performed frequently) meet professional guidelines and technical standards.

Finding 11. Task rankings computed resulted in some tasks emerging as more critical to social work practice. Therefore, a complex statistical model was applied, producing task weights. The model and corresponding calculations are considered **confidential** by the ASWB but the model was provided to AMS for review. The model applied to establish the task weights appears to meet professional guidelines and technical standards.

Practice Analysis – Final Content Outline/Test Blueprint

In August 2002, ACT and the PATF met to link content categories for each exam to the survey tasks (ASWB, 2004, p. 21).

In February 2003, ACT met with the PATF to conduct the test blueprint workshop. The goals were to compare the U.S. and Canadian data to determine if the data supported a North American test blueprint and to finalize new blueprints.

Finding 12. The analyses conducted by ACT, the resulting criteria used to evaluate the data, and consequently the decision to construct a North American test blueprint to serve both the U.S. and Canada, meet professional guidelines and technical standards.

Following a review of the comparison data, the PATF received additional instruction and was then divided into four groups (i.e., representing the four licensure exams). Each group completed the following four activities: (a) reviewed descriptive statistics for the tasks to confirm that task rankings were consistent with their knowledge of social work; (b) reviewed the KSA statements making decisions to retain, edit, or delete statements accuracy and representation of current practice; (c) reviewed content categories and domains, revising as needed; and, (d) reviewed the preliminary weights for the blueprint

categories, adjusting the weights and number of exam questions assigned to each category as needed (ASWB, 2004, pp. 25-26).

Finding 13. The methodology used to construct the final test blueprint is defensible, meeting professional guidelines and technical standards associated with a content-related validation study. However, a few issues are noted below.

Issue 2. The use of the terms “content domain” and “content area/category” in relation to the task and KSA statements is confusing. Further, presentation of only domains and content areas results in an outline lacking depth and specificity in terms of social work practice. This weakness *may* impact the use of the test blueprint for candidate examination preparation.

Issue 3. The same comment can be applied to the resulting KSA statements listed in the final test blueprint. They do not provide a descriptive reference to level of competency, specificity, or function. The lack of descriptive context *may* impact the use of the test blueprint for examination development purposes or candidate examination preparation.

Conclusions

Although issues of concerns are noted, given the overall strength of the methodology and findings, the practice analysis for the Clinical exam conducted by the ASWB and ACT demonstrates a sufficient level of validity, meeting professional guidelines and technical standards.

Chapter 3: Examination Development

Standards

Examination development includes many steps within an examination program, from the development and evaluation of a practice analysis to scoring and analyzing questions or items following the administration of an examination. Specific activities evaluated in this section of the report include item writing, linking to content outline/blueprint, and developing examination forms.

The most relevant standards from the *Standards* relating to examination development, as applied to credentialing or licensing examinations, are:

Standard 3.6

The type of items, the response formats, scoring procedures, and test administration procedures should be selected based on the purposes of the test . . . The qualifications, relevant experiences, and demographic characteristics of expert judges should also be documented. (p. 44)

Standard 3.7

The procedures used to develop, review, and try out items, and to select items from the item pool should be documented. If the items were classified into different categories or subtests according to the test specifications, the procedures used for the classification and the appropriateness and accuracy of the classification should be documented. (p. 44)

Standard 3.11

Test developers should document the extent to which the content domain of a test represents the defined domain and test specifications. (p. 45)

Findings and Issues

The ASWB provided the following reports documenting examination development activities and techniques: *ASWB Study Guide—Clinical Examination (2007)*, *Item Writing Guide (2007)*, and *The Exam “Blue Book” (2004)*.

Examination Development - Use and Training of SMEs and Item Writing

The ASWB actively recruits and selects individuals to work as paid item writers. The selection process involves screening social workers who apply to become item writers. New item writers are trained annually by item development consultants and serve one-year terms, renewable for three years. Item writers are contracted to produce a specific number of items, due on a periodic basis. Items may be reviewed and edited by item development consultants or ASWB staff prior to submission to the ASWB Examination Committee for final review (ASWB Policy Manual, p. II-10; Marson, DeAngelis, & Mittal, 2008, p. 12).

Finding 14. The criteria used to select SMEs as item writers are consistent with professional guidelines and technical standards.

Finding 15. Item writers are required to sign confidentiality agreements and are instructed about examination security which is consistent with professional guidelines and technical standards.

Finding 16. The SME training material contained in the *Item Writing Guide*, especially the appendices, is useful, comprehensive, well-illustrated, and reflects professional guidelines and technical standards associated with item/question development.

Finding 17. Also consistent with professional guidelines, item data are used in the item development process (ASWB & ACT, personal communication, April 11, 2008, p. 2).

Issue 4. Although there are usually 40-60 item writers under contract at any given time, the 18-member Examination Committee conducts the final review and editing of the items. Members are appointed by the ASWB President and serve for a one-year period, renewable each year for two additional years (ASWB Policy Manual, p. II-7). Therefore, each member is potentially involved in final review and editing for a three-year period. Hence, the final review could be restricted to a relatively small number of SMEs.

Finding 18. Given the weakness stated in Issue 4, the other policies associated with participation as an Examination Committee member are consistent with professional guidelines and technical standards.

Examination Development – Linkage to Test Blueprint and Use of References

Finding 19. SMEs are instructed to frame the item topic based on the KSA within the test blueprint to ensure that the exam measures concepts relevant to day-to-day practice and different cognitive levels, consistent with professional guidelines and technical standards.

Finding 20. SMEs are further instructed to provide justification for the correct answers in the form of known and up-to-date references, consistent with professional guidelines and technical standards.

Finding 21. According to the ASWB and ACT, the ASWB does not create a restricted list of references for item writers. They are encouraged to use up-to-date references and are referred to the list of references in the study guide. Reference citations are checked as part of the item development consultant's review process when writers make initial submissions. After consultant approval, the item and the content included in the related reference are reviewed by the

Examination Committee (ASWB & ACT, personal communication, April 11, 2008, p. 1)

Examination Development – Examination Forms

ACT pre-selects the exam items based on test specifications, item performance, key balance, etc. The form is reviewed by the Examination Committee members for final approval. After making any item substitutions requested by the committee, ACT uses IRT pre-equating to calculate the passing score for the form and processes the exam for on-line release (ASWB & ACT, personal communication, April 11, 2008, p. 2).

Multiple forms are available at the test sites at any given time. The forms are rotated throughout the year. Use of IRT reduces the need to overlap items across forms.

Finding 22. The criteria applied to create new exam forms, including item overlap (i.e., items common with a previous form) meet professional guidelines and technical standards.

Finding 23. Given the guidelines for item writers and reviewers, it appears items discriminating between minimally competent and incompetent candidates for licensure should result from examination development activities.

Table 1 presents the exam, number of items and the time allowed for exam administration.

Table 1 - Examination Information

Examination	Number of Scored Items	Number of Pretest (Non-scored) Items	Time Allowed
Clinical	150	20	4 hours

Examination Development – Size of Item Banks

The ASWB recognizes the importance of having a sufficient number of items within their item banks. “The goal is to have high performing items which are about 7 to 8 times the number required by the test specifications” (ASWB & ACT, personal communication, February 8-29, 2008, p. 17).

Findings 24. The statistical criteria used to define “high performing” items are consistent with professional guidelines and technical standards.

Examination Development – Readability Study

In July 1998, the ASWB had a readability study conducted on its exams. Five well-known readability tests were used. Overall, the results of the study showed that the exams read at the same level as 10th grade textbooks, except for specific terms associated with the social work profession. It was concluded that the knowledge of the English language does not affect the performance of English as a second language (ESL) candidates (ASWB, 1998; see Chapter 5: Test Administration for additional discussion on ESL candidates).

Finding 25. A recommendation was made to conduct periodic readability analyses on the ASWB exams. Because of fiscal constraints and practical issues, readability studies are not typically conducted on licensure exams. This action represents a positive step beyond traditional validation efforts.

Conclusions

Given the Findings and Issues, the examination development conducted by the ASWB and ACT demonstrates a sufficient degree of validity, meeting professional guidelines and technical standards.

Chapter 4: Passing Scores⁵

Standards

The passing score of an examination is the score that represents the cut off that divides those candidates for licensure who are minimally competent and those who are incompetent.

The most relevant standards from the *Standards* relating to passing scores, points, cut scores, or standard scores as applied to credentialing or licensing examinations, are:

Standard 4.21

When cut scores defining pass-fail or proficiency categories are based on direct judgments about the adequacy of item or test performance or performance levels, the judgmental process should be designed so that judges can bring their knowledge and experience to bear in a reasonable way. (p. 60)

Standard 14.17

The level of performance required for passing a credentialing test should depend on the knowledge and skills necessary for acceptable performance in the occupation or profession and should not be adjusted to regulate the number or proportion of persons passing the test. (p. 162)

The supporting commentary on passing or cut scores in the Standards, Chapter 4 – Scales, Norms, and Score Comparability states that there can be no single method for determining cut scores for all tests and all purposes. The process used should be clearly documented and defensible. The qualifications of the judges involved, and the process of selection should be part of the documentation. A sufficiently large and representative group of judges should be involved, and care must be taken to assure that judges understand what they are to do.

In addition, the supporting commentary in the Standards – Chapter 14 – Testing in Employment and Credentialing states that the focus of credentialing standards is on “levels of knowledge and performance necessary for safe and appropriate practice” (p. 156). “Standards must be high enough to protect the public, as well as the practitioner, but not so high as to be unreasonably limiting” (p. 157).

Findings and Issues

The ASWB provided the following reports discussing passing scores for review: *The Reliability and Validity of the Association of Social Work Boards (ASWB) Examination Scores* (2008, March), *ASWB Study Guide - - Clinical Examination* (2007), *Increasing the Validity of the Standard-Setting Process for Licensure Examinations* (April, 2005), and *The Exam Bluebook* (2005).

⁵ Recall a passing score is also known as a pass point, cut score, or standard score.

In addition to these reports, the ASWB provided the following **confidential** report for review during an onsite visit: *Passing Score Studies for the 2004 ASWB Examinations*.

Passing Scores – Purpose, Use of Subject Matter Experts, and Methodology

The process of establishing passing scores for licensure exams relies upon the expertise and judgment of SMEs. Thirty-two SMEs from the PATF and the Examination Committee participated in the passing score study used to establish the passing score for the Clinical exam.

ACT uses the passing score approach referred to as the “Modified Angoff Method.” The ACT psychometrician trained the SMEs in the modified Angoff method and facilitated the passing score study.

Finding 26. The purpose of the passing score study was to determine the passing standard for the Clinical exam.

Finding 27. The training of the SMEs and the application of the modified Angoff method is consistent with professional guidelines and technical standards. It should be noted that the SMEs received an introductory letter and materials to orient them to the purpose of the study (ACT, 2004; Mittal, Cartmill, & Vincent, 2005).

Finding 28. The number of SMEs used in the passing score study met professional guidelines and technical standards.

Issue 5. It should be noted that the Examination Committee members participating in the passing score study could have been the same SMEs conducting the final review and editing of exam items. Typically, the group of SMEs establishing the passing score of an exam should not be the same group who reviews or constructs the exam. This strategy presents a more “sanitized” review of the exam items when applying the modified Angoff method and associated concepts (e.g., minimally competent candidate).

Passing Scores – Analysis and Results

ACT conducted an analysis of the SMEs ratings produced during the passing score study.

Finding 29. The statistical analysis performed on the SME ratings met professional guidelines and technical standards.

Finding 30. The resulting raw passing score appears to be reasonable given the data provided. Further, the calculations used to establish the passing score are based on professional guidelines and technical standards.

Passing Scores – Equating Forms

Recall that a number of forms are available at any given time. The resulting score from the passing score study represents the *raw* passing score for the anchor exam. Through a process called equating, the raw passing score is adjusted up or down depending on the difficulty levels of the individual items within the new forms. Therefore, regardless of the exam form taken, the level of competency that must be demonstrated by a candidate remains the same across forms and jurisdictions.

Finding 31. The ASWB and ACT use IRT to evaluate items and equate exam forms. Although the particular IRT model was not evaluated by AMS, it is assumed that the chosen model and resulting data are credible.

Passing Scores – Adjustment by Jurisdictions

A warning about passing score changes is given in *The Exam “Blue Book,”* cautioning individual jurisdictions against adjusting the passing score. AMS requested the names of the jurisdictions that actually adjust the passing score.

Finding 32. The ASWB replied that no jurisdictions adjust the passing score. As required by statute or regulation, jurisdictions use either 70 or 75 as a passing score. The raw number of items required to be correct for each form of the examinations is scaled to 70 or 75 depending on the required score for the jurisdiction in which the candidate is seeking licensure. Recently, the ASWB has made available to its member boards a pass/fail scoring option instead of a numerical score (ASBW & ACT, personal communication, February 8-29, 2008).

Conclusions

Given the Findings and Issues, the passing score study conducted by the ASWB and ACT is comprehensive and conveys the significance of SME training on minimum competency standards as applied to licensure examination and their respective passing scores. Further, the ASWB passing score study demonstrates a sufficient degree of validity, meeting professional guidelines and technical standards.

Chapter 5: Test Administration

Standards

The most relevant standards from the *Standards* relating to test administration, as applied to credentialing or licensing examinations, are:

Standard 5.1

Test administrators should follow carefully the standardized procedures for administration and scoring specified by the test developer, unless the situation or a test taker's disability dictates that an exception should be made. (p. 63)

Standard 5.2

Modifications or disruptions of standardized test administration procedures or scoring should be documented. (p. 63)

Standard 5.5

Instructions to test takers should clearly indicate how to make responses. Instructions should also be given in the use of any equipment likely to be unfamiliar to test takers. Opportunity to practice responding should be given when equipment is involved, unless use of the equipment is being assessed. (p. 63)

Findings and Issues

In 1995, the Delegate Assembly of the ASWB voted to move all registration operations to the ASWB national office in Culpeper, Virginia. This move allowed the ASWB to improve level of service. The following year, the Delegate Assembly approved the decision to award ACT a contract as the ASWB's testing vendor (ASWB, 2008b, p. 2).

ACT is an independent, not-for-profit organization that provides more than a hundred assessment, research, information, and program management services in the broad areas of education and workforce development. ACT has offices across the United States and throughout the world (www.act.org/aboutact).

Finding 33. ACT has several employees assigned to carry out the contracted services that range from practice analysis and exam development to computer-based testing (CBT), research, and information technology (ASWB & ACT, personal communication, February 8-29, 2008, pp. 13-14).

Test Administration – Operations Manual

The ASWB publishes a *Candidate Registration Center Operations Manual* that is designed to assist member boards understand registration and administration of the ASWB licensing exams. Although ACT has its own operations manual, only the ASWB manual was reviewed for the purposes of this report.

Finding 34. The operations manual is detailed and comprehensive and includes the following subject areas:

- I. General Information (e.g., Candidate Registration Center numbers)
- II. Examination Related Policies (e.g., testing accommodations)
- III. Examination Registration Process (e.g., registration procedures)
- IV. Test Centers (e.g., irregularities and observer policies)
- V. Other Services (e.g., official score report information)

Test Administration – Computer-Based Testing (CBT) Centers

There are 230 centers across the nation designed for CBT. Nine centers are located in California (i.e., Concord, Fremont, Fresno, Los Angeles, Sacramento, San Diego, San Jose, Santa Ana, and Woodland). The centers are used for purposes other than testing. Most centers are in post secondary institutions in their assessment of workforce development departments. ACT enters into contractual relationships with individual site locations to provide ACT with CBT capabilities (ASWB & ACT, personal communication, February 8-29, 2008, p. 14).

Finding 35. It appears that the ASWB and ACT have taken significant measures to ensure that candidates have access to convenient CBT centers with trained proctors. Although the centers are used for purposes other than administration of ASWB licensing exams, the integrity of the testing process and the security of the exams do not appear to be compromised.

Test Administration – Registration of Candidates

The ASWB has a detailed registration process that can be found in a number of publications (e.g., *ASWB Examination Candidate Handbook*) as well as the ASWB website.

Finding 36. The ASWB registration process appears straightforward. The information available to candidates is detailed and thorough, stating ASWB policies when necessary.

Finding 37. The ASWB efforts directed toward enforcement of the pre-approval of candidate policy demonstrates continuity of putting into effect policies in a fair and reasonable manner.

Test Administration – Special Accommodations and Arrangements

The ASWB along with the respective jurisdiction approve any necessary accommodations under the Americans with Disabilities Act (ADA). The requests are then forwarded to ACT who in turn forwards the specific accommodations directly to the test center. Accommodations not previously approved are not permitted at the test center. Qualified readers and sign language interpreters are arranged when approved. With the

exception of an ASL interpreter who may sign the items, there are no translators (ASWB & ACT, personal communication, February 8-29, 2008, p. 15).

Although ESL is not covered under ADA, the ASWB does make special arrangements for those candidates requesting an ESL provision. Thirty-seven jurisdictions permit ESL special arrangements and sixteen do not. New York does not permit ESL special arrangements and will not accept score transfers for candidates who received the arrangement while testing for another jurisdiction (ASWB & ACT, personal communication, February 8-29, 2008, p. 16).

Finding 38. The special accommodation procedure appears to meet professional guidelines and technical standards.

Issue 6. The criterion used to determine ESL arrangements is not consistent across jurisdictions. However, once the member board determines that ESL arrangements are appropriate, two hours of extra time and the use of up to two language dictionaries is allowed by the ASWB. To ensure unmarked dictionaries for use by candidates, the ASWB sends the dictionaries to the candidate in a sealed package to be opened by the test center personnel, who then collect the dictionaries after the candidate finishes testing. A prepaid envelope is provided for the test center personnel to return the dictionaries to the ASWB (ASWB & ACT, personal communication, April 22, 2008, p. 1).

Test Administration – Candidate Feedback

The candidates are asked to complete a voluntary on-line survey about the exam registration and administration processes prior to receiving their scores.

Finding 39. Of the 29,221 candidates taking one of the ASWB licensure exams during 2007, 29,121 took the time to complete the survey (Note: the 100 missing data may have been paper-and-pencil administered exams). Results showed that 2% to 6.7% did not complete one or more questions. Survey results, however, were consistently favorable, indicating a high satisfaction with the registration and CBT administration processes (ASWB & ACT, personal communication, April 15 & 22, 2008, p. 1).

Test Administration – Exam Security

AMS confirmed that administrative procedures have been established to accommodate emergency closures, weather-related situations, and security-related incidents (ASWB & ACT, personal communication, February 8-29, 2008, p. 15).

Further, AMS also confirmed that ACT monitors the CBT sites to ensure that procedures are adhered to ensure the integrity of the testing process. Monitoring occurs in the form of in-person visits and feedback from candidates reported via the survey at the end of their test sessions. The ASWB staff has also taken exams to audit the administration

process. Member boards are encouraged to do the same (ASWB & ACT, personal communication, February 8-29, 2008, p. 16).

Finding 40. The exam security protocols in place as they pertain to test administration appear to meet professional guidelines and technical standards (see Chapter 8: Test Security for additional information).

Conclusions

Given the Findings and Issues, the test administration protocols in place by the ASWB and ACT appear to meet professional guidelines and technical standards.

Chapter 6: Examination Performance

Standards

The most relevant standards from the *Standards* relating to examination performance, as applied to credentialing or licensing examinations, are:

Standard 2.1

For each total score, subscore, or combination of scores that is to be interpreted, estimates of relevant reliabilities and standard errors of measurement or test information functions should be reported. (p. 31)

Standard 3.9

When a test developer evaluates the psychometric properties of items, the classical or item response theory (IRT) model used for evaluating the psychometric properties of items should be documented. The sample used for estimating item properties should be described and should be of adequate size and diversity for the procedure. The process by which items are selected and the data used for item selection, such as item difficulty, item discrimination, and/or item information, should also be documented. When IRT is used to estimate item parameters in test development, the item response model, estimation procedures, and evidence of model fit should be documented. (pp. 44-45)

Findings and Issues

The ASWB supplied several **confidential** monthly performance reports as examples of analyses used to evaluate the Clinical exam, including the *ASWB Technical Report for 2005* and the *ASWB Technical Report for 2006*, both are considered **confidential**.

Examination Performance – Analyses

Finding 41. Analyses are performed on the Clinical exam to ensure all scored items are valid. ACT uses both item statistics and candidate comments to flag poorly performing items. Flagged items are then reviewed by the Examination Committee and a decision is made whether to retain the item(s) as scored. From a review of the technical reports, it appears that scored items are seldom removed because of rigorous development and review guidelines.

Finding 42. Each form of the exam includes pretest items. Approximately 35% to 65% of pre-tested items are converted to active status and the remaining are flagged for review or deletion based on their statistics (Marson et al. 2008, p. 14).

Finding 43. Descriptive test statistics (e.g., mean, standard deviation, standard error of measurement, test reliability, and decision consistency reliability) were calculated. Resulting statistics were typical for licensure examinations (ACT, 2005; 2006).

Finding 44. Both Classical Test Theory and IRT item statistics were calculated and presented in the reports. Item difficulty values (b-parameters) and item discrimination indices were in typical ranges for licensure examinations (ACT, 2005; 2006). It should be noted that distractor (incorrect answer) data was not provided to AMS for review. This is not a critical issue given the credibility of the data presented.

Examination Performance – Differential Item Functioning

Differential Item Functioning (DIF), a measure of item bias, occurs when candidates from different groups (e.g., gender, ethnicity) have different rates of performance on a particular item.

Finding 45. In addition to performing traditional statistical analyses, the ASWB and ACT monitor item bias and adverse impact by utilizing procedures to measure DIF. It should be noted that the ASWB and ACT have access to demographic information that allow such analyses to be computed.

Examination Performance – Candidates Sitting for Clinical Exam and Pass Rates

Finding 46. Tables 2, 3, and 4 present candidate numbers and pass rates for the past three years. Overall pass rates and those for first time examinees are reasonable and fall within the parameters for this type of licensing examination.

Table 2 – Candidates Sitting for the Clinical Exam

	Candidates By Year		
Examination	2007	2006	2005
Clinical	11,603	10,419	9,695

Table 3 – Overall Clinical Exam Pass Rates

	Overall Percent Passed By Year		
Examination	2007	2006	2005
Clinical	61.9%	61.8%	62.1%

Table 4 – First Time Clinical Exam Pass Rates

	First Time Percent Passed By Year		
Examination	2007	2006	2005
Clinical	73.9%	73.6%	73.7%

Conclusions

Given the Findings and Issues, the steps taken by the ASWB and ACT to evaluate examination performance are valid and legally defensible, meeting professional guidelines and technical standards.

Chapter 7: Information Available to Candidates

Standards

The most relevant standards from the *Standards* relating to candidate information, as applied to credentialing or licensing examinations, are:

Standard 8.1

Any information about test content and purposes that is available to any test taker prior to testing should be available to *all* test takers. Important information should be available free of charge and in accessible formats. (p. 86)

Standard 8.2

Where appropriate, test takers should be provided, in advance, as much information about the test, the testing process, the intended test use, test scoring criteria, testing policy, and confidentiality protection as is consistent with valid responses. (p. 86)

Findings and Issues

The ASWB website is located at www.aswb.org. It provides extensive information about the ASWB as a central resource for information on the legal regulation of social work, including specific services (e.g., ASWB Exam Information, Licensing Requirements, Social Work Continuing Education, Exam Registration/Score Transfers, and ASWB Product Ordering). In-house staff have direct access to web content, making changes and updates as necessary (ASWB & ACT, personal communication, April 11, 2008, p. 3).

Finding 47. By clicking on “ASWB Exam Information,” candidates can locate the following informational items in this section of the homepage:

- FAQs (seven frequently asked questions with responses)
- Sites (access to over 230 test centers)
- Accommodations (disability accommodation information)
- Handbook (access to, and ability to print, the ASWB candidate handbook)
- Registering (how to)
- Study Guide (access to online ordering)
- Exam Development (explanation of phases associated with exam development and scoring)
- 2007 Examination Pass Rates (from all four exams)
- Practice Analysis (access to practice analysis report)
- Content Outlines (for all four exams)
- Customer Service (phone numbers, web address, etc.)

Finding 48. The *ASWB Examination Candidate Handbook* provides detailed information about the ASWB examination programs. There is no cost to

download this handbook. The *ASWB Study Guide* for the Clinical exam provides both general information about the examination process (e.g., the role of the ASWB and examination registration) and specific information associated to the Clinical exam program (e.g., Clinical exam content outline and practice test). There is a \$30.00 fee to purchase the guide.

Conclusions

Given the Findings, and Issues, the information provided to candidates about the ASWB Clinical exam program is comprehensive, meeting professional guidelines.

Chapter 8: Test Security

Standards

The most relevant standards from the *Standards* relating to test security, as applied to credentialing or licensing examinations, are:

Standard 5.6

Reasonable efforts should be made to assure the integrity of test scores by eliminating opportunities for test takers to attain scores by fraudulent means. (p. 64)

Standard 5.7

Test users have the responsibility of protecting the security of test materials at all times. (p. 64)

Findings and Issues

AMS was provided with a copy of the *ASWB Exam Security (2007)* manual for review. These written procedures were a result of an independent psychometric evaluation conducted (Haladyna, 2000). The psychometrician found that important security measures were being implemented, but the methods used by the ASWB to protect the examinations should be documented (ASWB, 2007a, p. 1).

Finding 49. The manual provides detailed information about ASWB security procedures. Areas addressed include the following:

- Association Staff and Leadership
- Item Generation
- Handling of New Items
- Editing by Consultants
- Examination Committee
- Item Bank Maintenance
- Test Administration, ASWB
- Test Administration, Test Centers
- Test Administration, Test Material, and Equipment
- Test Administration, Paper and Pencil
- Suspected Breaches of Security in Administration

Finding 50. According to the ASWB, there was a major security breach in 1995 with the Basic examination. All items on that examination were removed from the item pool. The items were never used again and legal action was taken against those believed to be responsible for the breach. Minor instances have also occurred but have been addressed by ASWB, ACT, and the respective member boards (ASWB, 2007a, p. 1).

Finding 51. The ASWB also maintains an operations manual that specifies procedures for addressing suspected breaches of examination security (see Chapter 5: Test Administration).

Issue 7. By vote of the Delegate Assembly, policy prohibits examination review except in cases where it is mandated by jurisdiction. The ASWB has discouraged this practice and currently no member jurisdiction allows examination review (ASWB & ACT staff personal communication, February 8-29, 2008).

Conclusions

Given the Findings and Issues, the policies and procedures outlined in the *ASWB Exam Security* manual meet professional guidelines and technical standards.

Chapter 9: Comparison of the BBS LCSW Examination Plan and the ASWB Clinical Exam Content Outline and Test Blueprint

A meeting was held March 28-29, 2008 to critically compare and evaluate the BBS LCSW examination plan and the ASWB Clinical exam content outline and test blueprint. The BBS, with direction from AMS, recruited SMEs to participate in the meeting. Nine of the ten SMEs scheduled to attend the meeting participated (i.e., one cancelled prior to the meeting).

SMEs represented both northern and southern California, rural and urban areas, had been licensed from almost 1 year to 26 years ($M=12.5$ years licensed), and worked full-time as LCSWs in various health care settings and in private practice. SMEs completed both Security Agreement and Personal Data forms which are on file with the BBS and document additional SME information.

An orientation was provided by AMS stating the purpose of the meeting, the role of the SMEs and the project background leading to the meeting. Once SMEs understood the purpose of the meeting, they independently reviewed both the BBS LCSW examination plan and the ASWB Clinical exam content outline and test blueprint.

The BBS LCSW examination plan consists of task and knowledge statements arranged by content and sub content areas, including exam weight percentages for each content area (California Department of Consumer Affairs, 2005). The ASWB Clinical exam blueprint used for this review was arranged by content domain, content area, and KSA statements. The test blueprint document is considered **confidential**.

After independent review of the documents, the AMS facilitator worked with the group to identify similarities and differences between the examination plan and test blueprint. Then, possible explanations for them were discussed. Finally, the references used to write items for the ASWB Clinical exam were reviewed.

Findings and Issues

Issue 8. A comparison of the documents shows that the BBS LCSW examination plan (see Appendix A for a summary) provides greater detail in terms of professional behaviors. Recall that the ASWB clinical content outline does not list task or knowledge statements, only content domains and areas with corresponding percentages (see Appendix B).

Issue 9. Further, the KSAs listed in the ASWB Clinical exam test blueprint were written in very general terms. The SMEs had difficulty linking many of the LCSW task and knowledge statements to the ASWB KSAs.

Issue 10. Finally, three of the ASWB content domains (VIII. Clinical Supervision, Consultation, and Staff Development; IX. Practice Evaluation and the Utilization of Research; and XI. Clinical Practice and Management) are not

measured to the same extent on the LCSW examination. These content domains account for 4%, 1%, and 5% respectively of the ASWB Clinical exam.

Although differences exist in the format or organization of the subject matter, the actual measurement of the knowledge associated with competent, entry-level practice is what is critical. At this time, it appears that the ASWB Clinical exam measures additional subject matter not found on the LCSW examination. The percentage, however, is minimal.

In addition, the generality of the task and knowledge statements make it difficult to ascertain if practice areas, for example, treatment of children, homelessness, grave disability, are addressed sufficiently.

The aforementioned issues can be addressed through a practice analysis.

Conclusions

Given the Findings and Issues, the BBS LCSW examination plan and the ASWB Clinical exam content outline/test blueprint differ. It would be inappropriate at this time to use the ASWB Clinical exam in California. Candidates seeking licensure in California would be unfairly evaluated since the knowledge and skills expected for entry-level practice as a Clinical social worker differ to some degree from those expected by the ASWB (California Department of Consumer Affairs, 2005; 2008).

Chapter 10: Overall Conclusions

AMS completed a comprehensive analysis and evaluation of the documents provided by the ASWB and ACT. The procedures used to establish and support the validity and defensibility of the ASWB Clinical exam program components (i.e., practice analysis, examination development, passing scores, test administration, examination performance, and test security) were found to meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* and *Business and Professions Code Section 139*.

Although issues of concern are documented in this report, validity is not an all-or-none concept. Rather, validity is a process of accumulating evidence. The ASWB and its psychometric partner ACT have provided a sufficient degree of evidence to support making valid decisions about entry-level practice performance from the Clinical exam.

The ASWB Clinical exam program has several methodological strengths beyond traditional licensure examination programs that should be highlighted. The following are examples of exemplary actions that support validation efforts:

- completing a comprehensive passing score study;
- using IRT to construct and equate exam forms, and to monitor exam performance;
- using DIF to monitor item bias and adverse impact;
- performing readability studies to measure exam reading level;
- using a qualified psychometric vendor who conducts extensive analyses and provides the ASWB with performance goals and recommendations to further strengthen the exam program; and,
- conducting ongoing research to improve the exam program and associated processes.

Given these strengths, however, there are additional points that the BBS should consider before rendering a decision to adopt the ASWB Clinical exam. Both minor and major points are discussed.

Minor points include the following: (a) role of Exam Committee members and Board of Directors; (b) multiple uses of CBT centers; and, (c) discrepancies across information presented in ASWB publications.

The significant influence of both the Exam Committee and Board of Directors was noted throughout this report. It was conveyed to AMS that the ASWB is aware of the importance of regularly rotating experts. To balance the need for continuity and new expert input, the Examination Committee members are rotated in thirds and the Directors serve in terms.

Regarding the CBT test centers, the ideal situation is to have test administration as the sole purpose of the site, however, fiscal and practical issues often make this ideal

impossible. As stated in Chapters 5 and 8, no significant security breaches appear to have resulted from the current CBT administration process.

Finally, during AMS' review of the ASWB guides and reports, it became apparent that some of the information was either outdated or discrepant. Several concerns noted during the initial review were addressed by further explanation from the ASWB and ACT. AMS recommends that the ASWB update its publications.

Major points include the following: (a) availability and confidentiality of Clinical exam program data and information, and (b) differences between the BBS LCSW examination plan and the ASWB Clinical exam content outline/test blueprint.

First, the ASWB initially provided AMS with several reports and guides to review. However, when AMS requested further explanation of processes and statistical exam data, AMS was asked to sign a confidentiality agreement. The request was reasonable, but it took over a month to reach an agreement between the BBS and the ASWB as to the language in the agreement. Some of the information considered confidential by the ASWB would be considered public by the BBS (e.g., overall exam performance statistics and knowledge statements). The ASWB maintains a very conservative view when sharing exam information. The ASWB did indicate a willingness to share confidential information; however, specifics would need to be negotiated between the BBS and the ASWB.

Regarding the differences across exams, a review of the actual Clinical exam *did* show that some of the topics not specifically addressed in the ASWB content outline/test blueprint are measured in the form of exam items (e.g., items addressing children and adolescents). However, since the ASWB knowledge statements lack depth and specificity, it is difficult to conclude that the same weight is given to relevant content or subject areas as found in the LCSW exam.

Further, the LCSW exam does not measure the following content areas measured in the Clinical exam:

- Clinical Supervision
- Staff Development
- Practice Evaluation
- Utilization of Research
- Clinical Practice and Management (partially measured)

Given the strengths of the ASWB Clinical exam program, the major points noted for BBS' consideration could possibly be addressed in the future, allowing a defensible decision to adopt the ASWB Clinical exam to be made. Actions would include negotiating ASWB exam information-sharing terms and updating the LCSW examination plan via the next occupational analysis or inclusion of a greater number of California licenses in the 2008 ASWB practice analysis sampling plan. It should be noted that the ASWB is in the infancy stages of its next practice analysis, presenting California with many opportunities.

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Appendix A: LCSW Examination Plan Summary

Content Area	Number of Tasks in Content Area	Number of Tasks in Content Subarea	Area Weight (%)	Subarea Weight (%)
I. Biopsychosocial Assessment	53		22.7	
A. Assessing for Risk		9		4.4
B. Assessment of Client Readiness and Appropriateness of Treatment		3		1.3
C. In-depth Assessment				
1. Comprehensive Exploration of Symptoms				
a. psychological factors		9		3.6
b. cultural/personal factors		5		2.0
2. Comprehensive Evaluation of Problem				
a. social-environmental history		7		3.1
b. medical and developmental history		7		2.8
c. history of substance abuse/abuse		3		1.2
3. Comprehensive Evaluation of Inter- and – intrapersonal Resources		10		4.3
II. Diagnostic Formulation	13		5.6	
III. Treatment Plan Development	26		10.8	
A. Identify/prioritize Objectives, Goals and Methods of Treatment		12		5.1
B. Integrate/coordinate concurrent Treatment Modalities and Adjunctive Resources		6		2.5
C. Monitoring, Evaluation and Revision		8		3.3
IV. Resource Coordination	22		8.9	
A. Service Identification and Coordination		10		4.1
B. Client Advocacy and Support		12		4.8
V. Therapeutic Interventions	106		40.1	
A. Crisis Intervention		7		3.0
B. Short-term Therapy		9		3.6
C. Children and Adolescents		22		8.5
D. Adults (Individual and Group Therapy)		24		8.9
E. Couples		17		5.6
F. Families		16		5.8
G. Managing the Therapeutic Process		11		4.9
VI. Legal Mandates and Obligations	11		5.4	
A. Protective Issues/Mandated Reporting		5		2.4
B. Professional Conduct		6		3.1
VII. Ethical Standards	14		6.4	
TOTAL	245	-	100	-

Appendix B: Clinical Examination Content Outline

- I. Human Development and Behavior in the Environment – 22%**
 - A. Theories of human development and behavior
 - B. Human development in the life cycle
 - C. Human behavior
 - D. Impact of crises and changes
 - E. Family functioning
 - F. Addictions
 - G. Abuse and neglect
- II. Issues of Diversity – 6%**
 - A. Effects of culture, race, and/or ethnicity
 - B. Effects of sexual orientation and/or gender
 - C. Effects of age and/or disability
- III. Diagnosis and Assessment – 16%**
 - A. Assessment
 - B. Information gathering
 - C. Diagnostic classifications
 - D. Indicators of abuse and neglect
 - E. Indicators of danger to self and others
- IV. Psychotherapy and Clinical Practice – 16%**
 - A. Intervention theories and models
 - B. The intervention process
 - C. Treatment planning
 - D. Intervention techniques
 - E. Intervention with couples and families
 - F. Intervention with groups
- V. Communication – 8%**
 - A. Communication principles
 - B. Communication techniques
- VI. The Therapeutic Relationship – 7%**
 - A. Relationship theories
 - B. Relationship practice
- VII. Professional Values and Ethics – 10%**
 - A. Value issues
 - B. Legal and ethical issues
 - C. Confidentiality

VIII. Clinical Supervision, Consultation, and Staff Development – 4%

- A. Social work supervision
- B. Consultation and interdisciplinary collaboration
- C. Staff development

IX. Practice Evaluation and the Utilization of Research – 1%

- A. Evaluation techniques
- B. Utilization of research

X. Service Delivery – 5%

- A. Policies and procedures of service delivery
- B. Processes of delivery service

XI. Clinical Practice and Management – 5%

- A. Advocacy
- B. Finance
- C. Management and human resource issues

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The MHSA Prevention and Early Intervention Component: The First Wave of Implementation



Board of Behavioral Sciences Presentation

May 29, 2008

Michelle Lawson, MSW


DMH Prevention and Early Intervention



Introduction to PEI

- Mental Health Services Act (MHSA)
 - Overview and Principles
- Prevention and Early Intervention (PEI) Component
 - Funding
 - PEI Framework
 - Proposed Guidelines and Resource Materials
 - Community Program Planning Process
- PEI Status and Progress





“Prevention and Early Intervention approaches in and of themselves are transformational in the way they restructure the mental health system to a ‘help-first’ approach... Mental health becomes part of wellness for individuals and the community, reducing the potential for stigma and discrimination against individuals with mental illness.”



The Mental Health Services Act (MHSA)

- Proposition 63 – November 2004
- 1% Millionaire's Tax
- Five components
 - Community Services and Supports
 - Education and Training
 - Capital/Technology
 - Prevention/Early Intervention (PEI)
 - Innovation





MHSA

Transformation Principles

- Community Collaboration
- Cultural Competence
- Individual/family-driven programs and interventions, with specific attention to individuals from underserved communities
- Wellness focus, which includes the concepts of resilience and recovery
- Integrated service experience for individuals and their families
- Outcomes-based program design



Prevention and Early Intervention



“It is all too easy to dismiss the value of mental health until problems appear.”



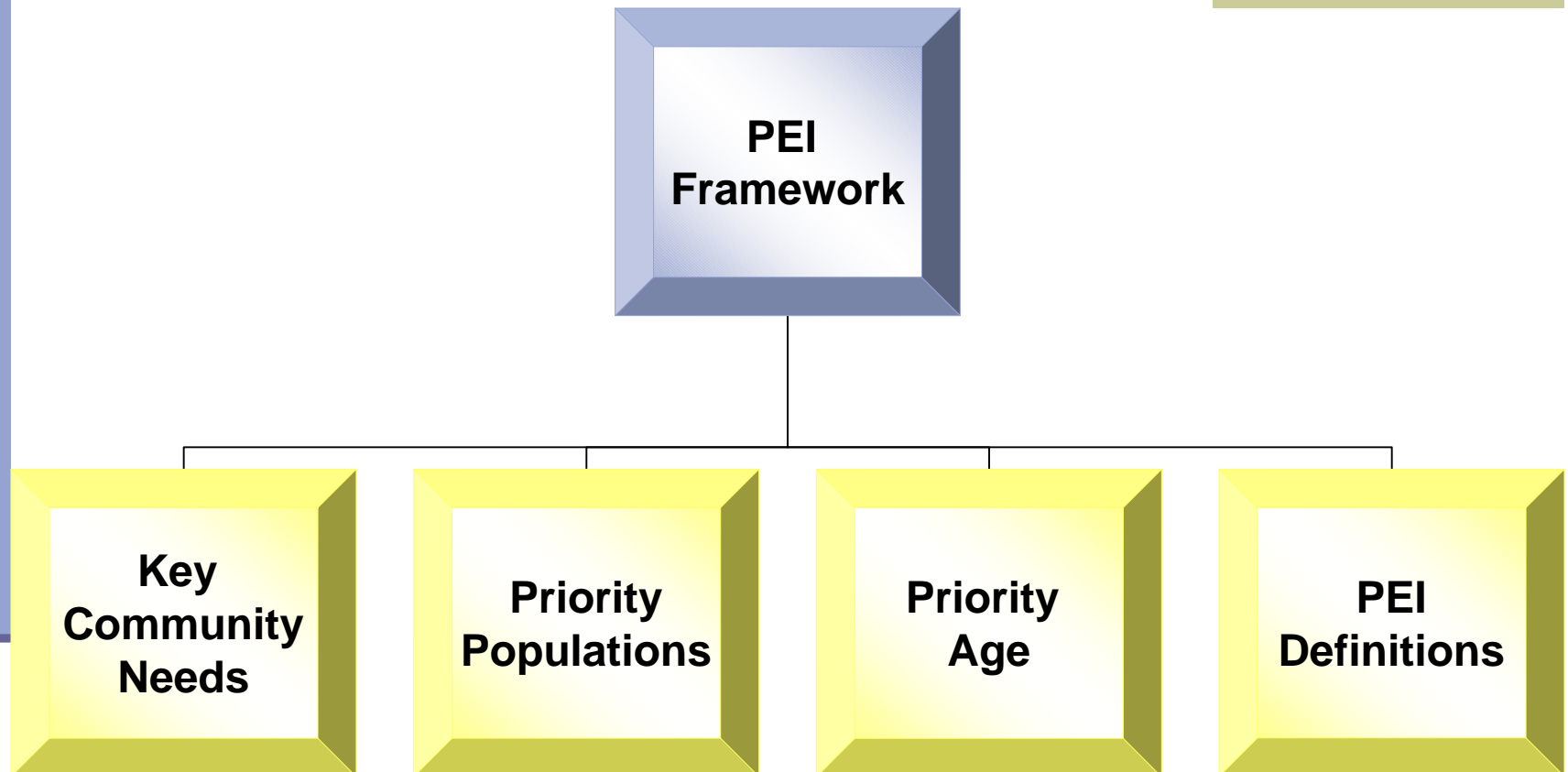
Why invest in PEI?

- Positive, Proactive Approach
- Cost-effective
 - Mental Health Treatment
 - Special Education
 - Welfare Supports
- Improves:
 - School Readiness
 - Academic achievement
 - Health Status
- Reduce Future Negative Outcomes





The PEI Framework



<http://www.dmh.ca.gov/MHSOAC/docs/PolicyRecMHSAPEI.pdf>



Key Community Mental Health Needs

- Disparities in access to mental health services
- Psycho-social impact of trauma
- At-risk children, youth, and young adult populations
- Stigma and discrimination
- Suicide risk





PEI Priority Populations

- Underserved cultural populations
- Individuals experiencing onset of serious psychiatric illness
- Children/youth in stressed families
- Trauma-exposed individuals
- Children/youth at risk for school failure
- Children/youth at risk of or experiencing juvenile justice involvement





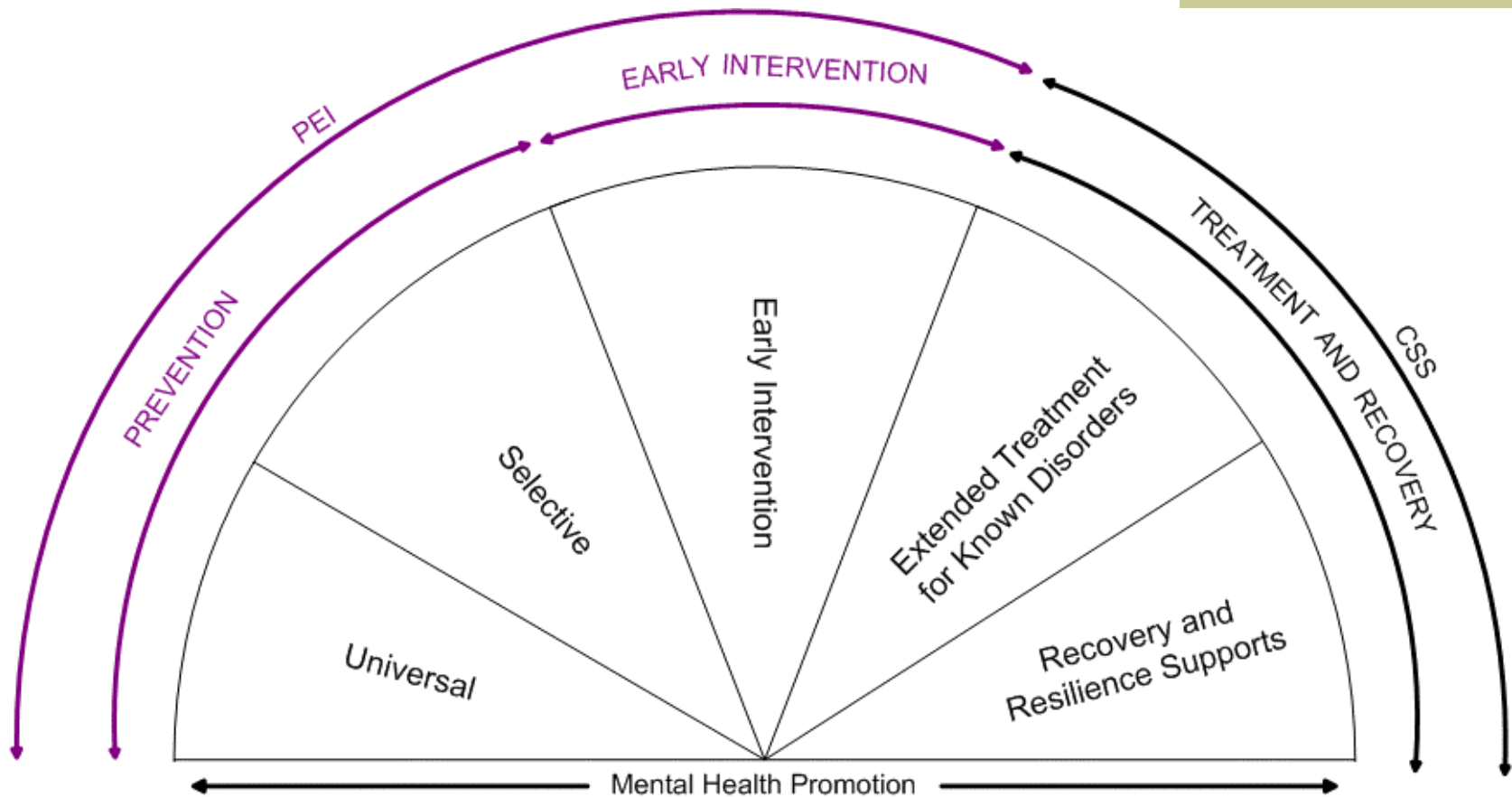
PEI Priority Age

- PEI Projects must address all age groups
- Minimum of 51 percent of the overall PEI component budget must be dedicated to individuals who are between the ages of 0 to 25 (small counties excluded)
 - Research finds that 50% of all lifetime mental health disorders start by age 14 and 75% start by age 24 (NIMH, 2005).
 - Priority Age gears prevention programs to the earliest years of life





Mental Health Intervention Spectrum Diagram



Source: Adapted from Mrazek and Haggerty (1994) and Commonwealth of Australia (2000) and the Institute of Medicine (IOM) Definitions



Prevention Defined

- Involves reducing risk factors or stressors
- Building protective factors and skills
- Promotes positive cognitive, social and emotional development





Early Intervention Defined

- Addresses a condition early in its manifestation
- Is of relatively low intensity
- Is of relatively short duration (usually less than one year)
- Has the goal of supporting well-being in major life domains and avoiding the need for more extensive mental health services



“Early prevention and intervention has a profound impact on helping families prevent continued abuse, trauma and removal of children and youth entering the juvenile justice system.” ~PEI Stakeholder





PEI Proposed Guidelines

- PEI Component Funding
 - 20% of the MHSA Fund
 - \$307.6 M for 01/08-06/09
 - Non-Supplant
- PEI Guidelines Released September 2007
 - http://www.dmh.ca.gov/Prop_63/MHSA/Prevention_and_Early_Intervention/default.asp
 - Resource Materials
 - Policy Change





Community Program Planning

- Purpose - Outreach and Engagement
- Information Notice 07-17 – Process and Timeline
- Involvement of required sectors:
 - Underserved Communities
 - Individuals with Serious Mental Illness and/or their Families
 - Providers of Mental Health Services
 - Education
 - Health
 - Social Services
 - Law Enforcement
- Required Comment Period and Public Hearing

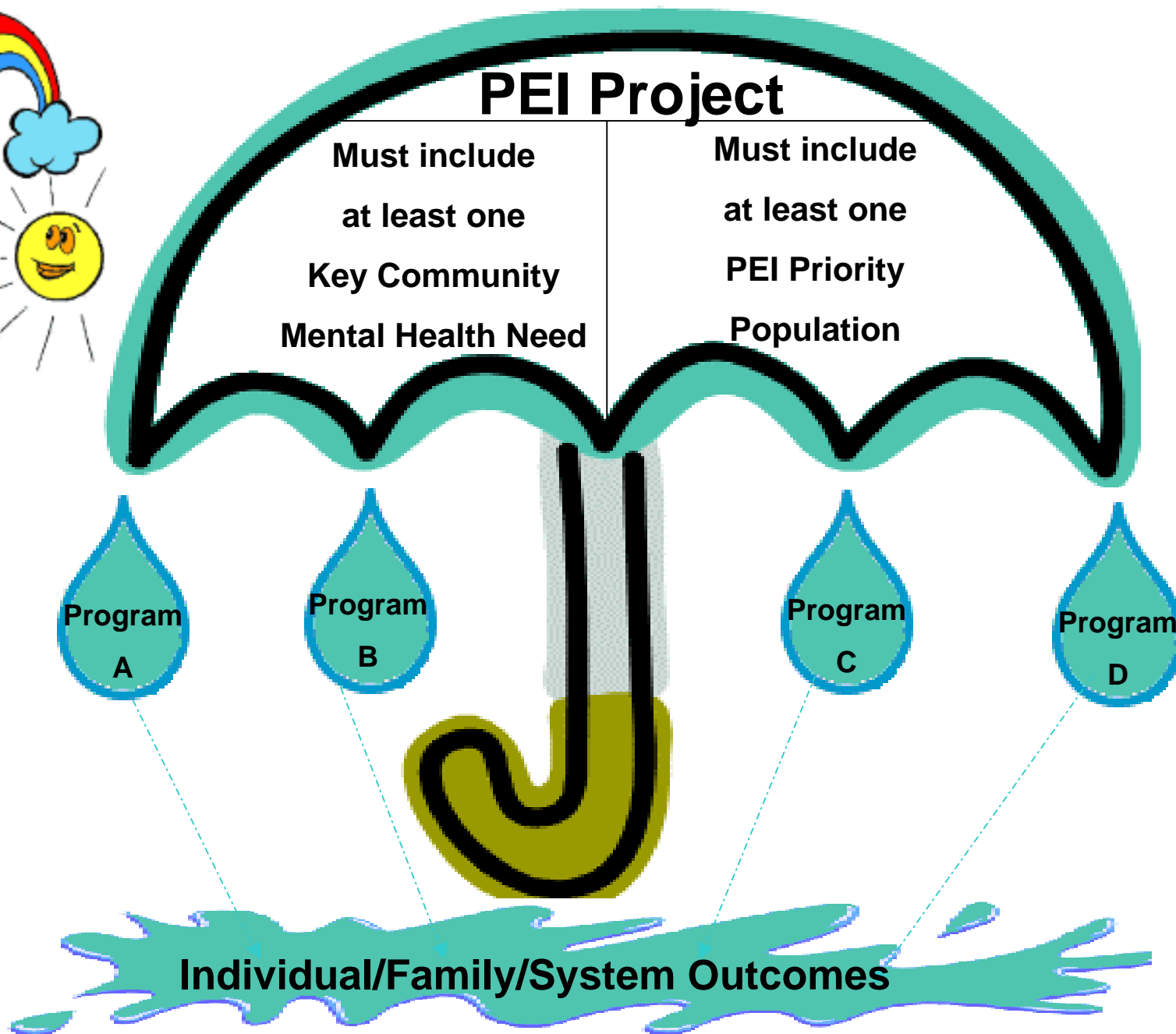




Community Program Planning Logic Model

- Identify and Select of PEI Key Community Mental Health Needs and Priority Populations
- Assess Community Capacity and Strengths
- Select PEI programs to Achieve Desired Outcomes
- Develop PEI Projects with Timeframes, Staffing and Budgets
- Implement Accountability, Evaluation and Program Improvement Activities







PEI Status

■ 38 requests for
Community Program
Planning processed



■ 3 PEI Component
Plans received



■ PEI Statewide
Projects

1. Suicide Prevention
2. Student Mental Health Initiative
3. Stigma and Discrimination
4. Training, TA and Capacity Building
5. Reducing Disparities through Ethnic Specific Programs and Interventions



Contact Information

CA Department of Mental Health
Prevention and Early Intervention
1600 9th Street, Room 150
Sacramento, CA 95814
(916) 653-2358



- Email: michelle.lawson@dmh.ca.gov
- Website: <http://www.dmh.ca.gov/mhsa>

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1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 13, 2008

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Future Meeting Dates

Below is the calendar for 2008 board and committee meetings. The November board meeting date was changed at the request of the Department of Consumer Affairs (DCA). That meeting will be part of a "board conference" where each board and bureau in DCA will hold its meeting at a common location that week. In addition to the board meetings, the conference will feature training on Wednesday, November 19 and networking opportunities for board members on each day. The board's participation in this conference is important, and I believe board members will get a lot out of the conference.

In addition, I have added proposed meeting dates for 2009 that follow our basic meeting pattern (generally the third Thursday and Friday of the month for board meetings):

Full Board Meetings

August 21-22, 2008 – North Coast
November 18, 2008 – Los Angeles

February 19-20, 2009 – Bay Area
May 14-15, 2009 – Sacramento
August 20-21, 2009 – TBA
November 19-20, 2009 – TBA

Committee Meetings

Policy and Advocacy Committee [Donna DiGiorgio – Chair, Renee Lonner, Karen Roye, Ian Russ]

July 11, 2008 – Bay Area
October 10, 2008 – Los Angeles
January 16, 2009 – TBA
April 10, 2009 -- TBA

LCSW Education Committee [Renee Lonner – Chair, Donna DiGiorgio, Joan Walmsley]

June 23, 2008 – Long Beach
September 15, 2008 – Bay Area
December 8, 2008 – San Diego

Examination Committee [Elise Froistad – Chair, Donna DiGiorgio, Joan Walmsley] All dates are tentative at this point.

July 30, 2008 – TBA

October 10, 2008 – Los Angeles

December 8, 2008 – San Diego

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Planning Committee

Date: May 13, 2008

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Board Self Assessment

Background

In its strategic plan, the board adopted objective 1.7 as follows:

Increase Board appointees' effectiveness index 10% by July 1, 2012.

At its November 2007 meeting, the board approved a methodology for assessing board member effectiveness that included ongoing self assessment by the board. The self assessment is focused on the degree to which the board's activity as a governing body exemplified our values as articulated in the BBS Way:

Be a person of *integrity*.
Be *dedicated* and *professional*.
Serve with *excellence*.

Action

Attached to this memo is a self assessment questionnaire that was discussed and approved at the February Planning Committee meeting. Staff developed a range of questions based on how board members would exhibit the BBS Way in its public conduct. Each question is categorized according to the value it reflects.

Once completed, the instrument will be used after each quarterly board meeting. If the board approves this document, it would be first used following the August board meeting. As a reminder, attached to this memo is a listing of the factors and weights for the board member effectiveness index.

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Board Member Effectiveness Index

Factor 1 -- Attendance (25%)

Attending scheduled board meetings (both committee and full board meetings) for the entire meeting.

Formula -- Actual Attendance / Possible Attendance

Actual Attendance = # of appointed members in attendance for full duration of each meeting * # of days of each meeting

Possible Attendance = # of appointed members * # of days of each meeting

Factor 2 -- Self Assessment (10%)

At the completion of each board meeting each board member completes a self assessment of the group's performance at both board and committee meetings that quarter.

The self assessment measures board member performance against the BBS Way (Integrity, Professionalism, Dedication, Service, Excellence) on a five item scale.

Formula -- (Each self assessment returns a value between 4 - 25 (five dimensions on a four point scale) * # of board members / number of responses) * 4 (establishes % result)

Factor 3 -- Community Assessment (10%)

Community members who attend 2 or more board/committee meetings per year are invited to complete the board member assessment on the same instrument in Factor 2.

example	2007/08 FY	# of Responses	Total Score	Avg Response	%
			65	1235	1976%

Factor 4 -- Enforcement Votes (20%)

Timely response to mail ballots.

Formula -- # of mail ballots returned within 2 week response period / # of mail ballots sent

Factor 5 -- Community Engagement (15%)

Board members engaging in the mental health community (either locally or statewide) outside scheduled board activity or regular course of practice.

Expectation of such engagement on average of one day per month

Formula -- # of board member days of community engagement / (# of board members) * 12

Factor 6 -- Outreach Participation (20%)

Formula -- total number of board member outreach days / total number of possible outreach days

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THE BBS WAY:

***BE A PERSON OF INTEGRITY
BE PROFESSIONAL AND DEDICATED
SERVE WITH EXCELLENCE***

Board Effectiveness Self-Assessment

On a scale of 1 to 5 (1 = never, 2 = rarely, 3 = sometimes, 4 = very often, 5 = always) please rate the board's overall performance on each item. The items are grouped according to the five values that comprise the BBS Way.

Integrity

1. Does the board exhibit commitment to its vision and mission?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

2. Does the board honestly debate and discuss issues before it in public meetings?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

3. Does the board consistently respect its boundaries as a governmental policy making body?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

4. Does the board base its decisions on information and comments presented to it?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Professionalism

1. Does the board openly accept and respond to constructive criticism?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

2. Does the board respect and value the roles of all professions and consumers?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

3. Does the board hold its members accountable for supporting organizational norms and values?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board hold the executive officer accountable for effective staff operations and implementing board policy?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Dedication

1. Is the board prepared to address the issues on each agenda?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board respect and support the priorities of each board member?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Does the board actively seek information and expertise from external sources?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board respond to public demand to address issues of concern?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Service

1. Does the board exhibit a primary commitment to public protection?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board actively engage in dialogue with the public?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Does the board responsibly seek out and support positive changes in mental health care?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board demand quality service from its staff?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Excellence

1. Does the board exhibit a proactive approach to understanding and addressing public needs?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board exhibit responsiveness to the challenges presented by public and professional diversity?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Is the board open to adapting its policies and practices based on changes in its environment?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board exhibit commitment to the priorities established by its strategic plan?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Other Comments:

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1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

From: Paul Riches
Executive Officer

Date: May 14, 2008

Telephone: (916) 574-7840

Subject: Budget Update

2007-08 Fiscal Year

Attached to this item is a new expenditure report for the current fiscal year. This report has been reformatted to highlight the "fixed" and "variable" elements in the BBS budget.

The attached expenditure report is in line with the projections provided at the February board meeting. With those actions taken, the current spending projections show a year-end reserve of approximately \$120,000 out of a \$5.6 million budget. That is a comfortable level of reserve. In addition, I have included the first expenditure report for our Mental Health Services Act (MHSA) position (currently occupied by Christy Berger). This report will be provided on an ongoing basis.

2008-09 Fiscal Year

The Governor's proposed 2008-09 Fiscal Year budget is very positive for the board. The good news is as follows:

- 1) The budget includes two investigative analyst positions for the board. Currently, we rely almost exclusively on the DCA Division of Investigation to conduct investigations of consumer complaints. The division is backlogged and we routinely wait for a year or more to get completed investigations. With the new analyst positions we should be able to work the great majority of complaint investigations in-house with greatly reduced wait times. It will take time to get these positions filled (we fully expect the budget to be significantly delayed again this year) and staff trained, but we will have much more control over our own work. The total cost to the board is approximately \$200,000.
- 2) The budget includes \$200,000 in added Mental Health Services Act funding for hiring consultants in public mental health and psychometrics to advise the board on aligning current programs and policies with the treatment model mandated by the MHSA. We received a full position funded by MHSA dollars in the 2007-08 budget, which was recently filled by Christy Berger.
- 3) The budget includes an additional position in the board's licensing program to improve our customer service. The position will focus on responding to applicant inquiries related to licensing processes and requirements. Our customer satisfaction surveys have consistently articulated a demand for more hands on help navigating the licensure process and this position will help the board satisfy that demand. Total cost to the board is approximately \$60,000.

These proposals have been passed by the budget committee in both houses of the Legislature and will be included in the final budget act absent extraordinary circumstances.

The Governor's May Revision indicates a \$17 billion deficit. As in past deficit years, the May Revision includes over \$100 million in loans to the General Fund from DCA licensing agencies. Included in this year's round of loans is another \$3 million loan from the BBS. A previous \$6 million loan from past budget crises remains outstanding. This loan will leave the BBS with approximately \$3 million in reserves, which covers roughly 6 months of operating expenses. This reserve amount is sufficient to ensure ongoing operations. The loan does not affect spending authority or in any way constrain current operations at this time.

Staff is preparing for a significantly delayed 2008-09 budget. Given the magnitude of the projected deficit and projections that the State will begin experiencing a cash crunch in late summer, most in the Capitol are predicting a very late budget. September or October dates for passage of a budget are entirely possible. Accordingly, we have made large purchases of consumable items designed to carry operations through the end of September. Business will continue in the absence of a budget (staff will continue to be paid), but some services and any purchases after June 30 must wait for a budget to be passed.

BBS EXPENDITURE REPORT

FY 2007/2008

OBJECT DESCRIPTION	06/07	FY 2007/08				
	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	CURRENT AS OF 3/31/08	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE	% OF TOTAL BUDGET
FIXED EXPENSES (Non-Discretionary)						
PERSONAL SERVICES						
Salary & Wages (Civ Svc Perm)	1,186,425	1,455,973	957,521	1,318,393	137,580	
Salary & Wages (Stat Exempt)	90,530	91,128	70,668	94,225	(3,097)	
Temp Help (915)(Proctors)	0	19,444	0	0	19,444	
Board Memb (Per Diem)	13,800	12,900	9,300	13,000	(100)	
Totals Staff Benefits	518,584	599,307	423,353	587,875	11,432	
Salary Savings		(64,600)			(64,600)	
OPERATING EXPENSES & EQUIP						
DEPARTMENTAL PRORATA						
DP Billing	277,890	362,554	271,935	362,554	0	
Indirect Distribution Costs	268,389	303,822	227,907	303,822	0	
Public Affairs	10,447	15,313	11,484	15,313	0	
D of I Prorata	7,154	13,428	10,071	13,428	0	
Consumer Relations Division	10,918	12,206	9,153	12,206	0	
OPP Support Services	448	448	0	448	0	
Facilities Operations	168,954	201,808	123,422	201,808	0	
General Expense	57,136	14,063	43,348	50,000	(35,937)	
Communication	8,797	24,329	5,454	8,800	15,529	
Division of Investigation	70,028	407,048	305,469	407,048	0	
Statewide Pro Rata	141,971	193,601	145,200	193,601	0	
Data Proc (Maint,Supplies,Cont)	11,231	4,897	5,492	4,897	0	
Interagency Services (OER IACs)	269,368	227,419	0	236,504	(9,085)	
TOTAL FIXED EXPENSES	3,112,070	3,895,088	2,619,777	3,823,922	71,166	67.6%
NON-FIXED EXPENSES (Discretionary)						
Temp Help (907)(Seasonals)	65,333	14,105	40,742	55,000	(40,895)	
Overtime	6,796	7,533	7,062	9,000	(1,467)	
Printing	95,790	96,393	59,216	95,000	1,393	
Postage	143,640	110,435	42,115	70,000	40,435	
Travel, In State	110,103	61,255	72,635	100,000	(38,745)	
Travel, Out-of-State	2,141	3,500	1,199	3,500	0	
Training	10,796	18,082	10,215	11,000	7,082	
C&P Services - Interdepartmental	0	13,863	0	0	13,863	
C&P Services-External Contracts	42,511	10,188	108,186	132,200	(122,012)	
Consolidated Data Services	2,385	22,626	1,782	3,000	19,626	
EXAM EXPENSES						
Exam Site Rental	89,604	92,456	55,924	92,000	456	
Exam Contract (PSI) (404.00)	374,552	416,947	244,574	300,000	116,947	
Expert Examiners (404.01)	248,673	274,000	243,770	250,000	24,000	
ENFORCEMENT						
Attorney General	475,170	443,542	365,397	520,000	(76,458)	
Office of Admin. Hearing	91,140	100,951	64,722	70,000	30,951	
Court Reporters	22,842		3,845	8,000	(8,000)	
Evidence/Witness Fees	30,785	66,198	27,717	35,000	31,198	
Minor Equipment (226)	21,866	14,000	6,311	10,000	4,000	
Major Equipment (Replace/Addit)	14,069	16,000		10,000	6,000	
TOTAL DISCRETIONARY EXPENSES	1,776,067	1,760,436	1,355,413	1,773,700	50,736	31.4%
TOTAL EXPENDITURES	4,888,137	\$5,655,524	\$3,975,190	\$5,597,622	\$121,902	

BOARD OF BEHAVIORAL SCIENCES

Analysis of Fund Condition

(Dollars in Thousands)

NOTE: \$6.0 Million General Fund Repayment Outstanding

	Actual 2006-07	2007-08	2008-09	2009-10	2010-11
BEGINNING BALANCE	\$ 5,368	\$ 6,273	\$ 6,163	\$ 5,426	\$ 4,836
Prior Year Adjustment	\$ 136	\$ -	\$ -	\$ -	\$ -
TOTAL ADJUSTED RESERVES	\$ 5,504	\$ 6,273	\$ 6,163	\$ 5,426	\$ 4,836
REVENUES AND TRANSFERS					
Revenues:					
Fees	\$ 5,389	\$ 5,435	\$ 5,467	\$ 5,576	\$ 5,688
Interest	\$ 320	\$ 123	\$ 108	\$ 91	\$ 95
Totals, Revenues	\$ 5,709	\$ 5,558	\$ 5,575	\$ 5,667	\$ 5,783
Transfers from Other Funds					
F00683 Teale Data Center	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL REVENUES AND TRANSFERS	\$ 5,709	\$ 5,558	\$ 5,575	\$ 5,667	\$ 5,783
TOTAL RESOURCES	\$ 11,213	\$ 11,831	\$ 11,738	\$ 11,093	\$ 10,619
EXPENDITURES					
Disbursements:					
State Controller (State Operations)	\$ 3	\$ 4	\$ -	\$ -	\$ -
Program Expenditures (State Operations)	\$ 4,937	\$ 5,664	\$ 5,664	\$ 5,664	\$ 5,664
Projected Expenses			\$ 648	\$ 593	\$ 285
TOTA	\$ 4,940	\$ 5,668	\$ 6,312	\$ 6,257	\$ 5,949
FUND BALANCE					
Reserve for economic uncertainties	\$ 6,273	\$ 6,163	\$ 5,426	\$ 4,836	\$ 4,670
Months in Reserve	13.3	11.7	10.4	9.8	8.9

NOTES:

ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2008-09

MHSA EXPENDITURE REPORT

FY 2007/2008

OBJECT DESCRIPTION	FY 2007/08				% OF TOTAL BUDGET
	BUDGET ALLOTMENT	CURRENT AS OF 4/30/08	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE	
FIXED EXPENSES (Non-Discretionary)					
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	60,948	24,344	33,014	27,934	
Totals Staff Benefits	26,000	10,058	14,082	11,918	
Salary Savings	(3,081)			(3,081)	
OPERATING EXPENSES & EQUIP					
Facilities Operations	2,000	0	1,110	890	
General Expense	8,056	0	2,500	5,556	
Communication	1,000	0	541	459	
TOTAL FIXED EXPENSES	94,923	34,402	51,247	43,676	47.9%
NON-FIXED EXPENSES (Discretionary)					
Printing	800	0	0	800	
Postage	800	0	0	800	
Travel, In State	200	0	914	(714)	
Training	1,000	0	550	450	
Minor Equipment (226)	9,200	405	4,500	4,700	
TOTAL DISCRETIONARY EXPENSES	12,000	405	5,964	6,036	5.6%
TOTAL EXPENDITURES	\$106,923	\$34,807	\$57,211	\$49,712	

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QUARTERLY LICENSING STATISTICS

1/1/2008 - 3/31/2008

	Associate Clinical	Marriage and Family	Licensed Clinical	Marriage and Family	Licensed	Totals
Applications Received	462	737	287	384	29	1,899
Applications Approved	398	685	230	351	16	1,680
Avg. Processing Time	18.9 days	21.8 days	50.3 days	47.8 days	23 days	32.4 days
Avg. Processing Time subtracting time for deficiencies	12.4 days	13.8 days	11.8 days	6.4 days	9 days	10.7 days

QUARTERLY LICENSING STATISTICS

(10/1/2007- 12/31/2007)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	442	681	255	387	26	
Applications Approved	449	661	251	359	25	
Avg. Processing Time	13.7 days	16.8 days	24.1 days	32.6 days	36.5 days	24.7 days
Avg. Processing Time subtracting time for deficiencies	8.1 days	8.4 days	11.5 days	9.8 days	8.4 days	9.2 days

QUARTERLY LICENSING STATISTICS

(7/1/2007- 9/30/2007)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	692	1,136	278	384	44	2,534
Applications Approved	743	1,149	270	394	44	2,600
Avg. Processing Time	20 days	17.5 days	36.1 days	35.8 days	25 days	26.9 days
Avg. Processing Time subtracting time for deficiencies	12.8 days	11.2 days	17.8 days	12.6 days	10.9 days	13.1 days

QUARTERLY LICENSING STATISTICS

(4/1/2007- 6/30/2007)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	460	673	250	427	24	1,834
Applications Approved	389	591	217	350	16	1,563
Avg. Processing Time	24 days	25.4 days	33.1 days	36.8 days	35.3 days	30.9 days
Avg. Processing Time subtracting time for deficiencies	11.7 days	11 days	16.6 days	12.3 days	13.5 days	13 days

QUARTERLY LICENSING STATISTICS

(1/1/2007- 3/31/2007)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	312	645	266	372	28	1,623
Applications Approved	280	564	282	304	18	1,448
Avg. Processing Time	23.9 days	26.4 days	40.4 days	39.4 days	52.1 days	36.4 days
Avg. Processing Time subtracting time for deficiencies	13.1 days	13.3 days	23.3 days	13.8 days	8.3 days	14.4 days

QUARTERLY LICENSING STATISTICS

(10/1/2006- 12/31/2006)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	396	639	234	354	16	1,639
Applications Approved	422	593	181	308	14	1,518
Avg. Processing Time	24.7 days	26.6 days	43.6 days	43 days	34.2 days	34.4 days
Avg. Processing Time subtracting time for deficiencies	11.6 days	14.6 days	18.8 days	14.3 days	12.8 days	14.4 days

QUARTERLY LICENSING STATISTICS

(7/1/2006- 9/30/2006)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	661	1,027	231	336	24	2,279
Applications Approved	623	996	198	289	27	2,133
Avg. Processing Time	19.1 days	20.4 days	28.3 days	32.3 days	33.9 days	26.8 days
Avg. Processing Time subtracting time for deficiencies	8.6 days	9.3 days	9.5 days	9.4 days	7.6 days	8.9 days

QUARTERLY LICENSING STATISTICS

(4/1/2006- 6/30/2006)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	445	645	247	422	38	1,797
Applications Approved	380	564	199	417	26	1,586
Avg. Processing Time	21.4 days	27.9 days	40.7 days	38 days	46.1 days	34.8 days
Avg. Processing Time subtracting time for deficiencies	10.6 days	5.9 days	10.3 days	11.8 days	2.5 days	8.2 days

QUARTERLY LICENSING STATISTICS

(1/1/2006- 3/31/2006)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	298	548	231	372	13	1,462
Applications Approved	298	525	167	367	15	1,372
Avg. Processing Time	36.6 days	37.9 days	36.2 days	45.4 days	68.7 days	45 days
Avg. Processing Time subtracting time for deficiencies	9.5 days	12.6 days	13.5 days	19 days	12.3 days	13.4 days

QUARTERLY LICENSING STATISTICS

(10/1/2005- 12/31/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	334	537	248	284	20	1,423
Applications Approved	339	621	194	298	14	1,466
Avg. Processing Time	39 days	34.4 days	26 days	64.1 days	50.6 days	42.8 days
Avg. Processing Time subtracting time for deficiencies	10.7 days	12.5 days	12.7 days	41.8 days	8.3 days	17.2 days

QUARTERLY LICENSING STATISTICS

(7/1/2005 - 9/30/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	561	1,062	270	390	28	2,311
Applications Approved	547	957	252	325	20	2,101
Avg. Processing Time	28.1 days	33.3 days	35.6 days	60.3 days	41.3 days	39.7 days
Avg. Processing Time subtracting time for deficiencies	9.4 days	13.8 days	18.4 days	44.9 days	8.8 days	19.1 days

QUARTERLY LICENSING STATISTICS

(4/1/2005-6/30/2005)

	Associate Clinical Social Worker	Marriage and Family Therapist Intern	Licensed Clinical Social Worker	Marriage and Family Therapist	Licensed Educational Psychologist	Totals
Applications Received	377	599	263	338	37	1,614
Applications Processed	346	460	301	298	33	1,438
Avg. Processing Time	47.5 days	42.1 days	51.1 days	63.8 days	64.8 days	53.9 days
Avg. Processing Time subtracting time for deficiencies	11.1 days	12.6 days	37 days	49.9 days	6.4 days	23.4 days

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 12, 2008

From: Paula Gershon
Program Manager

Telephone: (916) 574-7838

Subject: Personnel Update

New Employees:

Pat Fay joined the BBS in December filling the vacant Office Technician position. Pat serves as the Enforcement and Fingerprint Technician. Pat joins us from the Landscape Architects Technical Committee.

Racquel Pena joined the BBS in April filling the vacant Associate Analyst position in the Enforcement Unit. Racquel comes to us from the State Water Resources Control Board. Racquel worked for the BBS from 1996-2001.

Kari O'Connor, while not a new employee, returns to the BBS after a four-month maternity leave. Kari is an Office Technician in the Cashiering Unit.

Departures:

Kari Frank, who served as the lead analyst in the Board's Licensing Unit, left the Board on April 4, 2008. Kari took a promotion as a Staff Services Manager at the Board of Barbering & Cosmetology.

Jessica Upadhye, who served as an LCSW evaluator, left the Board on April 30, 2008. Jessica took a job at the Legislative Counsel Bureau.

Steve Sodergren, who has served as the Board's enforcement manager overseeing the enforcement unit has taken a job at the Department of Health Services. Steve's last day with the Board is scheduled for May 21, 2008.

Vacancies:

The Board is currently recruiting for an Office Technician to serve as an LCSW evaluator. The Board will begin recruiting for the vacant analyst position in the Licensing Unit very shortly.

Training

The following employees have completed the following training classes:

Paula Gershon	Basic Supervision Part I	March 3-7, 2008
Christy Berger	Basic Supervision Part I	April 7-11, 2008
Mary Hanifen	Understanding and Helping Clients with Co-Occurring Mental Health & Addition Disorders	April 30, 2008
Julie McAuliffe	Understanding and Helping Clients with Co-Occurring Mental Health & Addition Disorders	April 30, 2008

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 19, 2008

From: Christy Berger
MHSA Coordinator

Telephone: (916) 574-7834

Subject: Mental Health Services Act Coordinator's Report

In my role as the Board's Mental Health Services Act (MHSA) Coordinator, I have done the following since the February 2008 board meeting:

MFT Education Legislation (SB 1218)

In support of this legislation, I prepared a background sheet for the Senate Business and Professions Committee, a sample support letter for schools to use, a letter of sponsorship for the board, and contacted a number of individuals, agencies and advocacy groups to obtain support for the bill. I also made some additions to the web page that provides information and resources for MFT schools and I reviewed and suggested amendments.

Field Trips

I coordinated the field trips to Visions Unlimited and Quinn Cottages for the May 2008 board meeting.

Ethics Review Process

I began preparing for the Board's new ethics review process by researching and gathering information about ethical issues in recovery oriented environments.

Examination Review Committee

I began preparing for the Board's recently appointed Examination Review Committee by working to contract with a psychometrician to assist the committee.

LCSW Education Committee

I drafted a plan for the Committee's work in 2008, prepared materials and arranged speakers for the Committee's first two meetings, and began researching and compiling information about accredited MSW programs in California.

Strategic Planning

I met and worked with staff Champions to facilitate the work on each objective, performed further research related to objective 3.3 (Implement four strategies to address demographic disparities between providers of mental health services and consumers by July 1, 2012), and revised the report and work plan for objective 3.3.

Other

I researched and ordered books for the examination library and office, analyzed several bills and provided fiscal/workload impact estimates for several bills, and prepared the MHSA interagency progress report as required by the Department of Mental Health.

Attended the following training and meetings:

- February 22, 2008 – Closed session BBS Board meeting
- February 28, 2008 – Department of Mental Health (DMH) Suicide Prevention Plan Advisory Committee meeting
- March 12, 2008 – DCA Manager's Roundtable meeting
- March 17, 2008 – Met with DMH staff
- March 19, 2008 – Met with Stacie Hiramoto, consultant on cultural competence
- April 7-11, 2008 – Training, Basic Supervision Part I
- April 23, 2008 – Met with DMH staff
- May 1, 2008 – California Social Work Education Center (CalSWEC) meeting
- May 5, 2008 – LCSW Education Committee meeting
- May 28, 2008 – Plan to attend DMH Interagency Partners meeting

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 14, 2008

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Comment Letter on Department of Education Proposed Regulations

Board staff became aware of regulations proposed by the California State Board of Education that would, among other things, significantly restrict the roles and functions of licensed clinical social workers, marriage and family therapists and licensed educational psychologists in private schools. The period for public comment precluded bringing the issue to the full board, and the impact of the proposed regulations was significant enough that staff felt the need to provide comment independent of any board action. As an interim step, I consulted with the board chair prior to preparing the comment letter (attached for your review) and obtained his consent to make the comment. Staff is requesting that the board approve the comment letter at this meeting.

The comment period has closed on the proposed regulations and we have been unable to get a response regarding future action on the proposed regulation.

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1625 North Market Blvd., Suite S-200, Sacramento, CA 95834
(916) 574-7830, (916) 332-1700 TDD, (916) 574-8625 Fax
www.bbs.ca.gov

Arnold Schwarzenegger, Governor
State of California
State and Consumer Services Agency
Department of Consumer Affairs

March 25, 2008

Debra Strain, Regulations Coordinator
Legal Division
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Re: California Code of Regulations, Title 5 Section 3065 Rulemaking -- Comments

Dear Ms. Strain:

It has come to the attention of the staff of the Board of Behavioral Sciences (Board) that the State Board of Education (SBE) has submitted a proposed rulemaking that amends the California Code of Regulations at Title 5, section 3065. As the Executive Officer for the Board, I hereby submit the following staff comments in opposition to the proposed changes at proposed subdivisions (o)(1)-(2) of Section 3065.

Currently, Title 5, California Code of Regulations (CCR) Section 3065(p) permits schools to employ licensed clinical social workers, marriage and family therapists, licensed educational psychologists and other mental health professionals to perform psychological services, as defined. However, SBE's current proposal to amend Section 3065 would strike all of these licensees from the regulation and leave only psychologists with the authority to perform psychotherapy (see proposed definition for "psychological services" at subdivision (o)). As a result, only licensed psychologists would be able to perform psychotherapeutic or psychological services in nonpublic, nonsectarian schools in California. This interpretation is contrary to existing law and the practice Acts administered by the Board.

The practice Acts for both Licensed Clinical Social Workers (LCSWs) and Marriage and Family Therapists (MFTs) permit those licensees to provide services using psychotherapeutic techniques and applied psychotherapy. (See, Business and Professions Code (BPC) §§ 4980.02, 4996.9). Further, the services covered by proposed Section 3065(o) directly relate to the work performed by Licensed Educational Psychologists. BPC Section 4989.14 specifically provides that the services provided by LEPs pertain to "**academic learning processes or the educational system...**" (emphasis added, see BPC, § 4989.14). The scope of practice for Licensed Educational Psychologists (LEPs) provides that LEPs may, among other services, provide "**psychological counseling...**" (emphasis added). As a result, it is clear that psychologists are not the only mental health professionals permitted to provide psychotherapeutic or psychological services.

The result of interpreting that LCSWs, MFTs, and LEPs cannot provide psychotherapeutic or psychological services to students in nonsectarian, nonpublic schools cannot be understated. In a time when schools statewide are experiencing shortages of mental health professionals, this regulation would compound that shortage and increase costs by forcing

schools to retain only psychologists and not other duly licensed and qualified mental health professionals, such as those licensed by the Board.

For the following reasons, the Board recommends amending the current proposal as specified in this letter.

Specific Comments on Proposed Changes to Section 3065(o)(1)-(2)

Government Code section 11342.2 states, in pertinent part, "...no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." As a result, proposed regulations need to meet standards for authority, necessity and consistency.¹ (Gov. Code, § 11349.1(a).) Section 33031 of the Education Code, states, in pertinent part, that "the board shall adopt rules and regulations not inconsistent with the laws of this state..."

Changes to the Definition of "Psychological Services" and the deletion of qualified mental health practitioners from current Section 3065(p)(1)-(2) are inconsistent with State law and not necessary.

The following are the proposed changes to 5 CCR section 3065 (p), renumbered to (o)(1)-(2) in this proposal:

(o)(1) "Psychological services" means:

(A) ~~psychological counseling services provided to children with disabilities involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations;~~

~~(B) consultative services to parents, pupils, teacher, and other school personnel; or~~
~~(C) planning and implementing a program of psychological counseling for children with disabilities and parents by a credentialed or licensed psychological or other qualified personnel.~~

~~(B)(D) This term does not include assessment services and the development of an individualized education program IEP.~~

(2) Psychological services, other than assessment and development of the individualized education program IEP, shall be provided only by personnel who possess a license in psychology, or who are working under supervision of a licensed psychologist both regulated by the Board of Psychology, within the Department of Consumer Affairs.;

¹ Under the Administrative Procedure Act, "authority" means the provision of law that permits or obligates the agency to adopt, amend, or repeal a regulation. (Gov. Code, § 11349(b).) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, § 11349(d).) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion. (Gov. Code, § 11349(a).)

These proposed changes delete the current definition of “psychological services,” which is broad enough to be applicable to and incorporate the scope of practice of many licensed mental health professionals, including those under the jurisdiction of this Board. This definition has permitted many licensed mental health professionals to perform the services which, by law, they are duly licensed to perform for these schools. This proposed amendment to the definition would be more restrictive and reflect the scope of practice for only psychologists, which is derived from Business and Professions Code (BPC) section 2903. However, there appears to be no substantial evidence in the record as to why this change needs to be made.

The Initial Statement of Reasons (ISOR) for this proposed change merely states the following:

Subdivision (o)(1)(A) thru (o)(2)(E) - revises the definition of who can do “psychological services” as listed by the Business and Professional Code section 2903 and 2905 and regulated by the Board of Psychology. Therefore, (o)(2)(A) through (E) have been deleted as these classes of therapists, social workers and educational psychologists are not licensees of the Board of Psychology

This is not an accurate portrayal of what is being amended by this regulation. It is not the practice of psychology that is at issue, but rather what the SBE considers “psychological services” and who SBE determines may legally provide those services. This ISOR rationale for amending this regulation obscures the more central issue arising from this proposed regulatory change, which is the apparent misconception that “psychological services” and “psychology” are synonymous. Psychological services and the practice of psychology are not one in the same. As explained previously, psychological services, as defined in the proposed regulatory changes, include many activities that are also currently within the scope of practice for MFTs, LCSWs and LEPs. The fact that these mental health professionals use psychotherapeutic techniques or provide psychological counseling does not necessarily mean that they are “practicing psychology” as defined by BPC section 2903.

Nowhere is this fact more apparent than in the Board of Psychology's (BOP) own licensing laws, which state:

BPC §2908. “Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer a vocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words “psychological,” “psychologist,” “psychology,” “psychometrist,” “psychometrics,” or “psychometry,” or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists..”
(Emphasis added.)

In addition, BPC Sections 2903, 2905 and 2908 were first enacted in 1967, many years before this regulation was first adopted. There is no evidence in the ISOR that the current regulation and its current interpretation of who may perform psychological services were wrong. On the contrary, for the reasons stated in this letter, the Board strongly believes that the current interpretation is accurate. Thus, it appears that SBE's assertion that it needs to amend its regulation to conform to those sections of the Psychology Licensing Law is neither necessary nor consistent with the provisions of those laws.

Interpretation that Board's Licensees Cannot Provide Psychotherapy is not Consistent with Other California Laws

Other laws pertaining to the Board's licensees provide further support that SBE's proposed changes at Section 3065 (o)(1)-(2) are inconsistent with other California laws. Recognition of the services performed by the Board's licensees is found throughout California's laws.

BPC Sections 728 and 729 relate to the prohibitions against sexual contact with clients by psychotherapists. In pertinent part, Section 729 provides the following definition for a psychotherapist:

* * *

"Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist,"

* * *

Evidence Code section 1014 creates a "psychotherapist/patient privilege." For purposes of this privilege, Evidence Code section 1010 provides in part:

"As used in this article, 'psychotherapist' means:

* * *

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

* * *

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code. ..."

Civil Code section 43.92 was enacted in response to the California Supreme Court's decision in Tarasoff v. Regents of University of California (1976) 17 Cal.3d 425. This Section states:

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened

violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist who, under the limited circumstances specified above, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

Civil Code section 43.93 pertains to a cause of action against a psychotherapist for sexual contact with a patient or former patient. This section states, in pertinent part:

(a) For the purposes of this section the following definitions are applicable:

(1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) **"Psychotherapist" means** a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, **a marriage and family therapist**, a registered marriage and family therapist intern or trainee, **an educational psychologist**, an associate clinical social worker, or **a licensed clinical social worker**.

* * *

(Emphasis added.)

The foregoing provisions make it clear that SBE's decision to amend the definition of psychological services and remove the Board's licensees as qualified mental health professionals from this regulation is inconsistent with California's laws.

Finally, the revised definition of psychological services, an effective duplication of the licensed psychologist's scope of practice, deletes any reference to integrated and coordinated services with parents, teachers and other school personnel – begging the question of how a school should implement an IEP without coordinated efforts between all involved parties. This shift into a single focus denies the student the full spectrum of needed services currently available, further undercutting the argument that this change is necessary. The current authority for MFTs, LCSWs, and LEPs to provide psychological services in Section 3065 should be retained.

Proposed Rulemaking Does Not Meet the Authority or Reference Standards.

The authority and reference standards prevent regulations from altering or amending a statute or enlarging or impairing its scope. The reference code section cited for the changes to 5, CCR section 3065 includes BPC sections 2903 and 2905. These code sections describe who may practice psychology, as defined in the Psychology Licensing Law. The reference to BPC section 2903 clearly runs afoul of the OAL authority and reference standards by enlarging the scope of the statute to prohibit anyone but psychologists from providing psychological services in nonpublic nonsectarian schools (this is discussed further below). Moreover, proposed amendments at Subdivision (o) also impair the existing BPC sections that define the scope of practice of MFTs, LCSWs and LEPs by not allowing them to provide psychological or psychotherapeutic services in nonpublic, nonsectarian schools (discussed further under a later section).

- **BPC § 2903 (emphasis added to pertinent language)**

The scope of this statute is enlarged by the proposed regulation by effectively removing the below-emphasized language from Section 2903 that cross-references to other exemption

provisions in the BOP laws. This would result in an effective statutory enlargement that would mean that only psychologists may provide psychological services. Section 2903 currently states, that:

“No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, **except as otherwise provided in this chapter**. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

As used in this chapter, "fee" means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.”

- **BPC § 2908 and § 2909 provides the exemption referenced in § 2903 (above) (emphasis added to pertinent language)**

BPC § 2908. **“Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer a vocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrist," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.”**

BPC § 2909. **“Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:**

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be identified in the setting as a "registered psychologist." Those persons shall be exempt from this chapter for a maximum period of 30 months from the date of registration.”

MFT, LCSW and LEP Scope of Practice Statutes Impaired

In addition to enlarging the scope of the BPC sections referenced above, this proposed rulemaking impairs the scope of existing law defining the practice of the Board’s licensees. Specifically, these regulatory changes impair the scope of BPC sections 4989.14, 4996.9, and 4980.02. The next part of this letter will discuss the conflict with these code sections in more detail.

Proposed Rulemaking Does Not Comply with Consistency Standard

Proposed regulatory changes must satisfy the consistency standard, as defined in Government Code section 11349(d). Yet, by amending 5 CCR section 3065(o)(2) to prohibit MFTs, LCSWs and LEPs from performing psychological services, this proposed rulemaking comes into direct conflict with the respective licensing laws of each of these professions. Regardless of the definition of “psychological services” (as currently written or as proposed in this rulemaking), Board licensees are well within their scope of practice to perform these activities, and therefore, this proposed regulatory change is inconsistent and in conflict with existing law.

Proposed language contained at 5 CCR Section 3065 (o)(2) states that MFTs, LCSWs and LEPs may *not* perform the following activities:

“Services provided to children with disabilities involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.”

However, this is contradictory to the expressed practice rights of the Board’s licensees. BPC section 4980.02 outlines the activities within the scope of practice of MFTs:

“For the purposes of this chapter, the practice of marriage and family therapy shall mean that service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. This practice includes relationship and pre-marriage counseling.

The application of marriage and family therapy principles and methods includes, but is not limited to, the use of **applied psychotherapeutic techniques**, to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, **and the use, application, and integration of the coursework and training required by Sections 4980.37, 4980.40, and 4980.41.**” (Emphasis added.)

The cross-referenced sections cited above (attached to this letter) outline the training and coursework, in, among other matters; the treatment of children, developmental issues and life events from infancy to old age and their effect upon individuals, couples, family relationships; diagnosis, assessment, prognosis and treatment of mental disorders; and, effective psychotherapeutic techniques and modalities that may be utilized to improve, restore or maintain healthy individual, couple and family relationships.

BPC section 4996.9 defines the scope of practice of LCSWs. Again, the proposed rulemaking allowing only licensed psychologists to perform psychological services is inconsistent with the current law and the scope of practice of these licensed mental health professionals. Section 4996.9 states:

“The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, **counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.**

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.” (Emphasis added.)

The most egregious conflict with current law occurs with the total disregard for the scope of practice of LEPs. “Psychological services” as currently proposed at 5 CCR section 3065, incorporates many of the provisions of the LEP’s scope of practice. BPC section 4989.14 provides:

“The practice of educational psychology is the performance of any of the following professional functions pertaining to academic learning processes or the educational system or both:

- (a) Educational evaluation.
- (b) Diagnosis of psychological disorders related to academic learning processes.
- (c) Administration of diagnostic tests related to academic learning processes including tests of academic ability, learning patterns, achievement, motivation, and personality factors.
- (d) Interpretation of diagnostic tests related to academic learning processes including tests of academic ability, learning patterns, achievement, motivation, and personality factors.
- (e) Providing psychological counseling for individuals, groups, and families.
- (f) Consultation with other educators and parents on issues of social development and behavioral and academic difficulties.
- (g) Conducting psychoeducational assessments for the purposes of identifying special needs.
- (h) Developing treatment programs and strategies to address problems of adjustment.
- (i) Coordinating intervention strategies for management of individual crises.”

Again, it must be noted that regardless of the definition of “psychological services” (as currently written or as proposed in this rulemaking), LEPs are well within their scope of practice to perform these activities. Therefore, this proposed regulatory change is contradictory to current LEP licensing law.

Conclusions and Recommendations

Based upon the foregoing, the Board’s staff recommends the following changes to the proposed language for Section 3065:

Proposed Amendments to Language

Amendment: Page 22, Line 22, delete “psychological services” and insert “mental health services.” Delete lines 23 – 29 and reinstate previous language (lines 30-33). Make all appropriate changes to “psychological services” references throughout current law.

Reason: The Board believes that “mental health services” is a better representation of the services provided.

Amendment: Page 23, delete lines 5-7. Reinstate language on lines 8-16.

Reason: Makes section consistent with current law.

Amendment: Page 18, delete line 33 and page 19, delete line 1 and insert “psychiatry by the American Board of psychiatry and neurology.” Make same change on Pages 17, 21 and 24.

Reason: The Medical Board of California, Board of Behavioral Sciences and the Board of Psychology do not certify psychiatrists.

Amendment: Change references on page 18, lines 3-4 and page 19, lines 4-5 to “a licensed Mental Health Professional by the Board of Behavioral Science”

Reason: Technical.

Amendment: Page 22, Line 2, delete “a licensing agency” and insert “the Board of Behavioral Sciences.” Make same change to page 18.

Reason: Board of Behavioral Sciences licenses Educational Psychologists.

Amendment: Page 18, 19 and 22:

“license in as a psychologist psychology, or psychological assistant who are working under the supervision of a licensed psychologist, as a Psychologist issued by a licensing agency within both regulated by the Board of Psychology, within the Department of Consumer Affairs; or”

Reason: Makes language consistent with other provisions in the section and clarifies that the person working under the licensed psychologist must be a psychological assistant.

The Board believes the SBE proposed rulemaking amending 5 CCR § 3065(o), in its current form, poses significant risk to mental health professionals, schools, and families with children receiving these services. These changes will bring workforce challenges by narrowing the pool of qualified practitioners in nonpublic schools and will create an inequity in standards of service for students in nonpublic school settings and public schools settings. Additionally, these regulatory changes serve no clear purpose or apparent benefit, and, are in direct contradiction to current law. The Board asks SBE to reconsider this proposed rulemaking and adopt the above suggested amendments.

Please feel free to contact my staff, Tracy Rhine at (916) 574-7847 for any assistance in making the suggested changes to the proposed rulemaking.

Sincerely,

Paul Riches
Executive Officer

CC: Ian Russ, Chair
Laura Zuniga, Deputy Director Legislative and Regulatory Review
Department of Consumer Affairs

§4980.37. DEGREE PROGRAM; COURSE OF STUDY AND PROFESSIONAL TRAINING

(a) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program which meets the educational qualifications for licensure shall include all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(b) Educational institutions are encouraged to design the practicum required by subdivision (b) of Section 4980.40 to include marriage and family therapy experience in low-income and multicultural mental health settings.

§4980.40. QUALIFICATIONS

To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this subdivision, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall

contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children. The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years of experience that meet the requirements of Section 4980.43.

(g) The applicant shall pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree

earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and shall provide any other documentation the board deems necessary.

§4980.41. ELIGIBILITY TO SIT FOR LICENSING EXAMINATIONS; COURSEWORK OR TRAINING

All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (g) of Section 4980.40:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(e) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

California Department of Education (<http://www.cde.ca.gov/re/lr/rr/npsnotice45day.asp>)

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State of California

Arnold Schwarzenegger, Governor

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street, Suite 5111

Sacramento, CA 95814

Phone: 916-319-0827

Fax: 916-319-0175



NOTICE OF PROPOSED RULEMAKING AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5 REGARDING SPECIAL EDUCATION NONPUBLIC SCHOOLS

[Notice published February 15, 2008]

NOTICE IS HEREBY GIVEN that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing beginning at **9:00 a.m. on April 1, 2008**, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator
LEGAL DIVISION
California Department of Education
1430 N Street, Room 5319
Sacramento, California 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov. Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on April 1, 2008.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Authority: Section 33031, 47612.5(b), 47634.2, Education Code.

Reference: Sections 47604.3, 47605, 47612.5(b), 47632, 47634.2, 51745.6, 51747.3, 60640-60643, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Requirements for certification of California nonpublic schools and agencies are referenced in Part 30 of Education Code sections 56365 through 56366.12. Implementing regulations to clarify requirements for certification of California nonpublic schools and agencies are referenced in title 5, California Code of Regulations, sections 3001 et seq. The intent of these proposed regulations is to make technical changes to existing regulation language and to add new regulations implementing sections in Part 30 of the Education Code added by Assembly Bill 1858 (AB 1858), Chapter 914, Statutes of 2004 and AB 216, Chapter 382, Statutes of 2007. New provisions added to the Education Code by AB 1858 increase monitoring of nonpublic schools and agencies, and align nonpublic schools and agency requirements for certification to the public school standards of instructional materials and qualified personnel. AB 216, passed in October 2007, amends EC 56366.10 and gives the nonpublic schools more flexibility in selecting a curriculum that is appropriate for each student. These proposed regulations are necessary to clarify consistent procedures and criteria in the administration of California's nonpublic school and agency certification program to ensure that affected public and private agencies and interested persons are informed of their rights and responsibilities in the certification process.

DISCLOSURES REGARDING THE PROPOSED REGULATION

The SBE has made the following initial determinations:

Mandate on local agencies or school districts: None

Cost or savings to state agencies: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations have minimal impact on non-public, non-sectarian schools which are considered local businesses.

CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation may be directed to:

Sharon Croswell, Special Education Consultant
Special Education Division
California Department of Education
1430 N Street, Room 2401
Sacramento, CA 95814
Telephone: 916-327-3546

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an initial statement of reasons for the proposed regulation and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Sharon Croswell, Special Education Division, 1430 N Street, Sacramento, CA, 95814; telephone, 916-327-3546; fax, 916-327-3516. It is recommended that assistance be requested at least two weeks prior to the hearing.

Last Reviewed: Friday, February 15, 2008

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INITIAL STATEMENT OF REASONS

Nonpublic Schools

- SECTION 3001. Definitions.**
- SECTION 3051. Standards for Designated Instruction and Services.**
- SECTION 3060. Application for Certification.**
- SECTION 3061. Service Fees, Finance and Maintenance of Records.**
- SECTION 3062. Contracts and Agreements.**
- SECTION 3063. Program Reviews.**
- SECTION 3064. Staff Qualifications – Special Education Instruction.**
- SECTION 3065. Staff Qualifications-Designated Instruction and Services.**
- SECTION 3067. Certification Status.**
- SECTION 3068. Appeals and Waivers.**
- SECTION 3070. Graduation.**

INTRODUCTION

Current statute addresses, in part, the requirements for nonpublic school and agency certification. These proposed regulations are necessary to clarify consistent procedures and criteria in the administration of the nonpublic school and agency certification program to insure that effected public and private agencies and interested persons are informed of these requirements.

The proposed regulations reflect changes in California statute affecting Part 30 of the Education Code pursuant to: Chapter 1213, Statutes of 1992; Chapter 939, Statutes of 1993; Chapter 146, Statutes of 1994; Chapter 661, Statutes of 1994; Chapter 1172, Statutes of 1994; Chapter 976, Statutes of 1995; Chapter 233, Statutes of 1996; Chapter 944, Statutes of 1996; Chapter 854, Statutes of 1997; Chapter 89, Statutes of 1998; Chapter 311, Statutes of 1998; Chapter 691, Statutes of 1998; Chapter 840, Statutes of 1998; Chapter 1058, Statutes of 1998, and Chapter 914, Statutes of 2004.

The intent of these proposed regulations is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA (20 USC sections 1400 et seq.), its implementing regulations (section 300.1 et seq. of Title 34 of the Code of Federal Regulations), Part 30 of the Education Code and its implementing regulations (section 3001 et seq. of title 5 of the California Code of Regulations [CCR]). These proposed regulations are supplemental to, and in the context of, federal and state laws and regulations relating to the provisions of special education and related services by private schools and agencies.

SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE SECTION 11346.2(b)(1)

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it

is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

Article 1. General Provisions

Section 3001. Definitions.

The provisions of this section establish definitions for the terms used by the California Department of Education (CDE). This section currently exists as part of title 5, division 1, chapter 3, of the CCR. However, existing definitions have been amended or deleted and new definitions have been added. These changes are necessary to ensure that the terminology in the proposed regulations is consistent and will be understandable to private schools and agencies, local education agencies, special education pupils and their parents concerning the nonpublic school and agency certification program.

Subdivision (a) - clarifies the meaning of the term “access”. This definition has been amended to comply with the meaning of this term as mandated in the reauthorization of the Individuals with Disabilities Education Act (IDEA) of 2004 [20 U.S.C section 1400(c) (5)(A)], “the education of children with disabilities can be made more effective by having high expectations for such children ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.” Assembly Bill (AB) 1858 added the following to Education Code section 56366.10, “Pupils have access to the following educational materials, services, and programs to the extent available at the local education agency in which the nonpublic school is located. . . “. However, in October, 2007, AB 216 was passed giving the nonpublic schools more flexibility in selecting a student’s curriculum. Therefore, pursuant to IDEA 2004, AB 1858 and AB 216, the definition of “access” means that the nonpublic school must provide SBE-adopted, standards-based, core curriculum and instructional materials for kindergarten and grades 1 to 8, inclusive; and provide standards-aligned core curriculum and instructional materials for grades 9 to 12, inclusive, used by a local education agency that contracts with the nonpublic school. The nonpublic school will provide students with individual copies of textbooks and other instructional materials used to implement the standards-aligned core curriculum in each subject area as required by the Education Code for that particular grade. Further, subdivision (a)(2) clarifies that photocopies of textbooks and instructional materials are not acceptable access pursuant to Education Code section 60119(c)(1)-(2).

Subdivision (h) - adds the word “California” to State Board of Education to make it clear to local education agencies, private schools and agencies and the public that the State Board of Education means the California State Board of Education.

Subdivision (j) - adds the word “California” to identify for local education agencies, private schools and agencies and the public that the State

Superintendent of Public Instruction means the California State Superintendent of Public Instruction. Subdivision (i) is also revised to define “certification” for nonpublic schools and agencies.

Subdivision (k) - adds the phrase “a charter school participating as a member of a special education local plan area” as an additional educational agency contracting with an NPS. The change is necessary since this provision has been added to Education Code section 56026.3.

Subdivision (l) - omits “permit” as an acceptable document issued by the California Commission on Teacher Credentialing. In order to meet the requirements of No Child Left Behind (NCLB) and IDEA teachers must meet the standards of “highly qualified”. Emergency permits do not meet this requirement.

Subdivision (s) - adds the word “California” to identify for local education agencies, private schools and agencies and the public that the State Department of Consumer Affairs means the California Department of Consumer Affairs.

Subdivision (t) - deletes the reference to Education Code section 311(c) to clarify that section 311 may apply under additional circumstances.

Subdivision (u) - clarifies the term “local education agency”. This term has been amended to include a charter school and a special education local plan area in the definition of local education agency as a result of Education Code section 56026.3.

Subdivision (aa) - clarifies that current Education Code section 56363(a) identifies Designated Instruction and Services to mean Related Services and establishes consistent terminology to be used throughout the regulations.

The changes made to the “Reference” section reflect the numbering of Title 34 (IDEA) of the Code of Federal Regulations, effective on October 13, 2006.

Article 5. Implementation (Program Components)

Section 3051. Standards for Designated Instruction and Services.

AB 1662 signed into law on October 7, 2005 and chaptered as 653, Statutes of 2005, amended the Education Code to align California’s terminology “Designated Instruction and Services” with the federal equivalent terminology “Related Services”. Therefore, section 3051 was amended to replace “DESIGNATED INSTRUCTION AND SERVICES” with “RELATED SERVICES”, consistent with current Education Code.

Subdivision 4 - adds the word “either” to clearly identify categories as independent options and deletes the reference to Education Code section 56366.7 as this section has been repealed from the Education Code.

Subdivision 4(B) - adds section 3065 since this section defines staff qualifications for individuals providing designated instruction and services.

The changes made to the “Reference” section reflect the numbering of Title 34 (IDEA) of the Code of Federal Regulations, effective on October 13, 2006.

Article 6. Nonpublic, Nonsectarian School and Agency Services
Section 3060. Application for Certification.

Education Code section 56366.1(a) requires that any private school or agency that seeks to be certified by the CDE as a nonpublic school or nonpublic agency “shall file an application with the superintendent on forms provided by the department” with: (1) a description of the services to be provided; (2) a list of staff with copies of appropriate documents that display each person’s qualifications to provide special education and related services including individual criminal record summaries of staff having contact with minor children; (3) a budget; and (4) affidavits and assurances to comply with all applicable federal, state and local laws and regulations.

Subdivision (c) - clarifies the specific information that must be included with the application for nonpublic school or agency certification. The changes to this subdivision are as follows:

Subdivision (c)(3) - adds the e-mail address to the required information to be included in the application. Due to new technology, the application will be available through the internet and an e-mail address is now necessary to apply on-line.

Subdivision (c)(7) - adds the word “student” to clarify the program capacity information required for the application.

Subdivision (c)(8) - adds the words “including entrance and exit criteria and specific services designed to address student needs” to the required description of the program. Applicants must include a statement of the type of disabling conditions served, the services provided, and program entrance criteria and exit criteria for transition back to public school setting pursuant to Education Code section 56366.1(a)(2) and section 56345(b)(4).

Subdivision (c)(9) - adds the phrase “SBE-adopted (K-8) or standards-aligned (9-12) core-curriculum and instructional materials” to the application. Applicants are required to include the SBE-adopted, standards-based, core curriculum and instructional materials for kindergarten and grades 1 to 8, inclusive; and include the standards-aligned core curriculum and instructional materials for grades 9 to 12, inclusive, used by a local education agency that contracts with the nonpublic

school to meet the requirements of IDEA 2004, AB 1858 and AB 216, Education Code sections 56366.10(b)(1) and 60117-60119.

Subdivision (c)(12) - adds the phrase “annual operating budget...” to the application for certification as required by Education Code section 56366.1(a)(4) and (l)(B) to clarify that documentation required upon submission of the annual budget is necessary to determine reasonability of costs and revenues.

Subdivision (c)(13) - adds the phrase “Commencing July 1, 2006, an entity-wide audit in accordance with generally accepted accounting and auditing principles” to the application for certification as required by Education Code section 56366.1(l)(C).

Subdivision (c)(14) - adds the phrase “A list of qualified staff including subcontractors identifying their assignment and qualifications”, to the application. This is a new requirement per Education Code section 56366.1(a)(3).

Subdivision (c)(15) - deletes the word “expiration” and adds the word “clearance” to clarify the date when the tuberculosis test was read by a physician.

Subdivision (c)(17) - deletes a list of “school districts, county offices of education and special education local plan areas” and adds “contracting local education agencies” for whom the applicant has a contract with to provide services. The definition of “contracting local education agencies” was modified to comply with the definition of local education agency as a result of AB 1858 and required by Education Code section 56026.3.

Subdivision (c)(19) - deletes “county superintendent of schools” and adds “the California Department of Education” to identify the Department as the agency the applicant files the Private School Affidavit document for certification. This regulation is necessary to provide guidance to nonpublic schools and agencies and is required by Education Code section 33190.

Subdivision (c)(20) - adds to the application requirements a copy of the school’s “weekly class schedule and daily schedule with number of instructional minutes by each grade level served” as mandated in Education Code sections 41420, 46111-46113, 46117, 46118(g), 46141 and 46146.

Subdivision (c)(22) - adds “A copy of a business license (if applicable)” to the application requirements to comply with local laws and regulations. This regulation is necessary to provide guidance to nonpublic schools and agencies that respective documents are necessary to satisfy the written assurances required in Education Code section 56366.1(o).

Subdivision (c)(23) - adds “A written disaster and mass casualty plan of action” to clarify the written assurances required for the application for certification. This

regulation is necessary to provide guidance to nonpublic schools and agencies that respective documents are necessary to satisfy the written assurances required by Education Code section 56366.1(o).

Subdivision (c)(24) - adds “A building safety inspection clearance” to clarify the written assurances required for the application for certification. This regulation is necessary to provide guidance to nonpublic schools and agencies and is required by Education Code section 56366.1(o).

Subdivision (c)(25) - adds “A health inspection clearance” to clarify the written assurances required for the application for certification. This regulation is necessary to provide guidance to nonpublic schools and agencies that respective documents are necessary to satisfy the written assurances required by Education Code section 56366.1(o).

Subdivision (c)(26) - is revised to clarify additional information that nonpublic schools with a residential component must submit with an application for certification.

Subdivision (c)(26)(g) - adds “California schools only” to clarify that this requirement applies only to California schools. Out-of-state schools are not governed by California statutes in this regard.

Subdivision (d) - clarifies assurances and clearances requirements in Department regulations at 5 CCR sections 3060(e)(I)-(II), that a nonpublic school or agency must submit with their application for certification. This information is necessary to ensure that the applicant provides services in a safe environment consistent with all local, county or state requirements. Further, this information is required to alert the applicant about the necessity to comply with all state and federal laws regarding equal employment opportunities and the provision of services in a non-discriminatory manner.

Subdivision (d)(2) deletes the year “of 1988” to allow for updates in the Drug Free Workplace Act.

Subdivision (d)(3) - deletes the year “of 1973” to allow for updates in the Rehabilitation Act.

Subdivision (d)(5) - deletes the term “of 1964, as amended” to allow for updates in the Civil Rights Act.

Subdivision (d)(6) - deletes the requirement “Education Code section 33190 (Private School Affidavit)” as the Private School Affidavit is already required in section 3060(c)(15).

Subdivision (d)(7) - adds “Positive Behavioral Interventions Regulations” as an additional assurance requirement that a nonpublic school or agency must submit with their application for certification. This assurance was added to comply with 5 CCR 3052 which requires all nonpublic schools and agencies to comply with positive behavioral interventions.

Subdivision (e) - clarifies that the nonpublic school or agency applicant must submit a fee for certification as required by Education Code section 56366.1(m). This subdivision was amended due to the enactment of AB 1858, Chapter 914, Statutes of 2004.

Subdivision (g) is revised to (f).

Subdivision (h) is revised to (g).

Subdivision (g) - adds “pursuant to Education Code section 56366.1(c)”.

Subdivisions (i) and (j) - deleted to reflect changes made in AB 1858, Chapter 914, Statutes of 2004, regarding the length for which nonpublic schools and agencies can be certified.

Education Code 56366.10 is added to the “Authority cited” section to reflect the requirements of AB 1858.

Section 3061. Service Fees, Finance and Maintenance of Records.

Subdivision (a) - deleted since Education Code section 56366.7 has been repealed.

Subdivision (b) - is now (a) due to the repeal of Education Code section 56366.7 and adds “for each nonpublic and/or nonpublic agency site” to clarify the requirements in Education Code section 56366.1(l). “Ever” is added to “which” for clarification.

Subdivision (c) - is now (b).

Subdivision (d) - is now (c). Subdivision (c) adds language to clarify which “records” are being requested.

Education Code section 56366.7 is deleted from the “Reference” section as it was repealed on January 1, 2002. Education Code section 56366.1 has been added to the “Reference” section to reflect the requirements of AB 1858.

Section 3062. Contracts and Agreements.

Subdivision (h) – amended for clarity.

Section 3063. Program Reviews.

Education Code section 56366.1(e) requires the CDE to “conduct an onsite review of the facility and program for which the applicant seeks certification.” This section also requires the CDE to “conduct an additional onsite review of the facility and program.

Subdivision (a) - revises the number of years required for the CDE to conduct an on-site review from “four” to “three” years. Education Code section 56366.1 (e) was amended as a result of the passage of AB 1858, Charter 914, Statutes of 2004.

Subdivision (b) - clarifies that the contracting education agency is the contracting “local” education agency.

Section 3064. Staff Qualifications – Special Education Instruction.

Federal regulations require that the State set minimum personnel qualification standards for individuals delivering services to pupils with disabilities (34 CFR 300.18) and that these personnel qualifications be consistent with other state professional standards and establish suitable qualifications for individuals delivering special education and related services (34 CFR 300.156). Title 34, Code of Federal Regulations, section 300.156 requires that the personnel qualification standards be the highest standards set by the State applicable to recognized professions or disciplines and that the standards set for special education be coordinated with “any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.” In California, other state agencies authorized to establish professional standards for persons providing special education or related services are the California Commission on Teacher Credentialing and the California Department of Consumer Affairs.

Subdivision (a) – adds to the sentence “In each classroom for which the nonpublic school is seeking certification”, and the term “full time” to further clarify that each classroom will have a full time special education teacher. Subdivision (a) also deletes “or nonpublic agency” as an entity that can deliver instructional services to students. Pursuant to Education Code section 56035, a non public agency means an entity that provides related services to individuals with exceptional needs.

Subdivision (b) - adds the term “the individualized education program” as a student specific document nonpublic schools and agencies are required to follow in addition to the master contract and the individual services agreement.

Section 3065. Staff Qualifications-Designated Instruction and Services.

Federal regulations require that the State set minimum personnel qualification standards for individuals delivering services to pupils with disabilities (34 CFR 300.18) and that these personnel qualifications be consistent with other state professional standards and establish suitable qualifications for individuals delivering special education and related services (34 CFR 300.156). Title 34, Code of Federal Regulations, section 300.156 requires that the personnel qualification standards be the highest standards set by the State applicable to recognized professions or disciplines and that the standards set for special education be coordinated with “any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.” In California, other state agencies authorized to establish professional standards for persons providing special education or related services are the California Commission on Teacher Credentialing (CTC) and the California Department of Consumer Affairs (DCA).

Federal and state law also specifies many of the services that must be provided to pupils with disabilities, depending on the needs of the child as determined by the IEP team. In federal law, the list of related services is contained in 20 USC 1401 (26). In state law, the list of related services, formerly referred to as “designated instruction and services,” is contained in Education Code section 56363(a) and 5 CCR 3001(aa). Neither the federal nor the state list is considered to be exhaustive.

Section 3065 - deletes Designated Instruction and Services from the title consistent with current Education Code section 56363(a) and clarifies that the nonpublic school or nonpublic agency, as a condition of certification, must employ DIS staff who meet specific qualifications contained in the following subdivision in the service area. This regulation is necessary to provide the special categories of service that are subject to certification. This regulation defines each DIS and the qualifications that staff must have to provide that service for purposes of nonpublic school and agency certification.

Subdivision (a)(2) - adds “California Commission on Teacher Credentialing” to identify the appropriate issuing agency.

Subdivision (b)(2)(B) - is revised by adding, “license in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs” to clarify that the licensing agency for the occupational therapy license is the California Department of Consumer Affairs. Previously Business and Professions Code section 2570 et seq., allowed occupational therapists to practice in California upon receiving a certificate of registration from the National Board of Certification in Occupational Therapy. This regulation is necessary to provide guidance to nonpublic schools and agencies relative to the staff requirements to

provide occupational therapy services, as a DIS, to individuals with exceptional needs. This regulation is required by Education Code section 56366.1(n) (2).

Subdivision (d)(3) - revises the term “Marriage and Family Child Counselor” to “Marriage and Family Therapist”. The source of the revision is found with the California Department of Consumer Affairs the licensing agency that issues licenses for various professions that offer counseling and guidance in California. This regulation is necessary to provide guidance to nonpublic schools and agencies relative to the staff requirements to provide behavior intervention services, as a DIS, to individuals with exceptional needs. This regulation is required by Education Code section 56366.1(n)(2).

Additionally, the term “or Marriage and Family Therapist Interns” was added along with the licensees that can supervise the interns to allow for MFT interns to provide services to students attending a nonpublic school.

Subdivision (d)(4) – adds the phrase “or Associate Clinical Social Worker” was added along with the licensees that can supervise the associate to allow for clinical social worker associates to provide services to students attending a nonpublic school.

Subdivision (d)(6) - amends the license in psychology to include people “who are under the supervision of a licensed psychologist” and adds that they are both regulated by “the Board of Psychology, within” the Department of Consumer Affairs.

Subdivision (f)(2)(A) - revises the term “Marriage and Family Child Counselor” to “Marriage and Family Therapist”. The source of the revision is found with the California Department of Consumer Affairs, the licensing agency that issues licenses for various professions that offer counseling and guidance in California. This regulation is necessary to provide guidance to nonpublic schools and agencies relative to the staff requirements to provide counseling services, as a DIS, to individuals with exceptional needs. This regulation is required by Education Code section 56366.1(n)(2).

Additionally, the term “or Marriage and Family Therapist Interns” was added along with the licensees that can supervise the interns to allow for MFT interns to provide services to students attending a nonpublic school.

Subdivision (f)(2)(B) - adds the phrase “or Associate Clinical Social Worker” was added along with the licensees that can supervise the associate to allow for clinical social worker associates to provide services to students attending a nonpublic school.

Subdivision (f)(2)(D) - amends the license in psychology to include people “who are under the supervision of a licensed psychologist” and adds that they are both

regulated by “the Board of Psychology, within” the Department of Consumer Affairs.

Subdivision (i)(2) - clarifies the staff qualifications for personnel providing home and hospital services to individuals with exceptional needs. The source of the requirements found in this regulation is from the California Commission on Teacher Credentialing. The CTC is the state agency that issues teaching credentials to teachers in California. All special education teachers must meet the teacher requirements pursuant to Education Code section 56366.1(n)(2).

Subdivision (k)(2) - clarifies the staff qualifications for personnel providing occupational therapy as a DIS to individuals with exceptional needs. The source of the requirements found in this regulation is from the California Department of Consumer Affairs. The DCA is the state agency that issues licenses to practice occupational therapy services in California. Previously Business and Professions Code section 2570 et seq., allowed occupational therapists to practice in California upon receiving a certificate of registration from the National Board of Certification in Occupational Therapy. This regulation is necessary to provide guidance to nonpublic schools and agencies and is required by Education Code section 56366.1(n)(2).

Subdivision (m)(2)(C) - revises the term “Marriage and Family Child Counselor” to “Marriage and Family Therapist”. The name of the license has been changed by the California Department of Consumer Affairs, the licensing agency that issues licenses for various professions that offer counseling and guidance in California. This regulation is necessary to provide guidance to nonpublic schools and agencies is required by Education Code section 56366.1(n)(2).

Additionally, the term “or Marriage and Family Therapist Interns” was added along with the licensees that can supervise the interns to allow for MFT interns to provide services to students attending a nonpublic school.

Subdivision (m)(2)(D) - adds the phrase “or Associate Clinical Social Worker” was added along with the licensees that can supervise the associates to allow for clinical social worker associates to provide services to students attending a nonpublic school.

Subdivision (m)(2)(F) - amends the license in psychology to include people “who are under the supervision of a licensed psychologist” and adds that they are both regulated by “the Board of Psychology, within” the Department of Consumer Affairs.

Subdivision (o)(1)(A) thru (o)(2)(E) - revises the definition of who can do “psychological services” as listed by the Business and Professional Code section 2903 and 2905 and regulated by the Board of Psychology. Therefore, (o)(2)(A)

through (E) have been deleted as these classes of therapists, social workers and educational psychologists are not licensees of the Board of Psychology.

Subdivision (q)(2)(A) - adds the phrase “or Associate Clinical Social Worker” was added along with the licensees that can supervise the associate to allow for clinical social worker associates to provide services to students attending a nonpublic school.

Subdivision (q)(2)(B) - revises the term “Marriage and Family Child Counselor” to “Marriage and Family Therapist”. The name of the license has been changed by the California Department of Consumer Affairs, the licensing agency that issues licenses to practice social work services in California. This regulation is necessary to provide guidance to nonpublic schools and agencies is required by Education Code section 56366.1(n)(2).

Additionally, the term “or Marriage and Family Therapist Interns” was added along with the licensees that can supervise the interns to allow for MFT interns to provide services to students attending a nonpublic school.

Subdivision (u)(1)(B) – adds the word “disabilities” to the term “ low incidence” for clarification.

Subdivision (w) - deletes the phrase “or is qualified to provide the service” and clarifies that staff providing other designated instruction and services must either have (1) a license with the California Department of Consumer Affairs or other state licensing office; or (2) possess a teaching credential authorized by the California Commission on Teacher Credentialing. This proposed change is necessary since the California Commission on Teacher Credentialing and the California Department of Consumer Affairs are recognized as establishing standards for professional services in California and provide additional guidance to nonpublic schools and agencies as required by Education Code section 56366.1(n)(2).

Business and Professions Code sections 2620, 2903, and 2905 were added to the reference section to define the definition of physical therapy (2620) and to clarify who may engage in the practice of psychology (2903, 2905).

Section 3066. Out of State Nonpublic Schools/Agencies.

Change made for consistency.

Section 3067. Certification Status.

Education Code section 56366.1(f) requires the CDE to make a determination on an application for certification within 120 days of receipt of the application. This

section also specifies the options that the CDE may consider regarding the disposition of the application for certification.

Subdivision (a) -The reference made to “Subdivision 3067(d)(1)” is changed to “Subdivision 3067(b)” as this is the actual citation.

Section 3068. Appeals and Waivers.

This section specifies the: (1) time in which the nonpublic school or agency must file an appeal regarding a certification decision made by the CDE; (2) the type of appeal that may be forwarded to the CDE; and (3) time frame that a decision must be rendered regarding appeals filed by nonpublic schools or agencies.

Subdivision (e) - deletes the reference of Education Code section 56366.7 as this section has been repealed.

Section 3069. Annual Review of Individualized Education Program (IEP)

Changes made for consistency.

Section 3070. Graduation.

This section deletes the phrase “and adopted differential proficiency standards” as a requirement for high school graduation for individuals with exceptional needs as these standards were generally set below a high school level and were not consistent with the state’s content standards. Students graduating from high school must now pass the California High School Exit Exam by demonstrating a proficiency in state adopted content standards in language arts and mathematics. This regulation is necessary to provide guidance to nonpublic schools and agencies and is required by Education Code sections 60850 and 60605.

OTHER REQUIRED SHOWINGS – GOV. CODE SECTION 11346.2(b)(2)-(4)

Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(2):

The State Board of Education (SBE) did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these regulations.

Reasonable Alternatives Considered Or Agency’s Reasons For Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(3)(A):

No other alternatives were presented to or considered by the SBE.

Reasonable Alternatives That Would Lessen The Impact On Small Businesses – Gov. Code Section 11346.2(b)(3)(B):

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

Evidence Relied Upon To Support the Initial Determination That the Regulation Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(4):

The proposed amendments to the regulations have minimal impact on non-public, non-sectarian schools which are considered local businesses.

- The SBE has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.

Title 5, California Code of Regulations
Division 1. California Department of Education
Chapter 3. Handicapped Children
Subchapter 1. Special Education

§ 3001. Definitions.

In addition to those found in Education Code sections 56020-56033, Public Law 94-142 as amended (20 USC 1401 et seq.), and Title 34, Code of Federal Regulations, Part 300 and 301, the following definitions are provided:

(a) "Access" means that the nonpublic, nonsectarian school shall provide State Board of Education (SBE)-adopted, standards-aligned core curriculum and instructional materials for kindergarten and grades 1 to 8, inclusive; and provide standards-aligned core curriculum and instructional materials for grades 9 to 12, inclusive, used by a local education agency (LEA) that contracts with the nonpublic school.

(1) The nonpublic nonsectarian school shall provide each student with a copy of textbooks and other instructional materials used to the SBE-adopted core curriculum (K-8) and standards-aligned core curriculum (9-12) in each subject area.

(2) Photocopies of portions of textbooks or instructional materials, or photocopies of entire textbooks or instructional materials to implement SBE-adopted core curriculum (K-8) and standards-aligned core curriculum (9-12) is not sufficient access.

~~(a)~~(b) "Applicant" means an individual, firm, partnership, association, or corporation who has made application for certification as a nonpublic, nonsectarian school, or agency.

~~(b)~~(c) "Assessment and development of the individualized education program" (IEP) means services described in Education Code sections 56320 et seq. and 56340 et seq.

~~(c)~~(d) "Behavioral emergency" is the demonstration of a serious behavior problem:

(1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or

(2) for which a previously designed behavioral intervention is not effective.

1 Approved behavioral emergency procedures must be outlined in the special education
2 local planning area (SELPA) local plan.

3 ~~(d)~~(e) "Behavioral intervention" means the systematic implementation of procedures
4 that result in lasting positive changes in the individual's behavior. "Behavioral
5 intervention" means the design, implementation, and evaluation of individual or group
6 instructional and environmental modifications, including programs of behavioral
7 instruction, to produce significant improvements in human behavior through skill
8 acquisition and the reduction of problematic behavior. "Behavioral interventions" are
9 designed to provide the individual with greater access to a variety of community
10 settings, social contacts and public events; and ensure the individual's right to
11 placement in the least restrictive educational environment as outlined in the individual's
12 IEP. "Behavioral interventions" do not include procedures which cause pain or trauma.
13 "Behavioral interventions" respect the individual's human dignity and personal privacy."
14 Such interventions shall assure the individual's physical freedom, social interaction,
15 and individual choice.

16 ~~(e)~~(f) "Behavioral intervention case manager" means a designated certificated
17 school/district/county/nonpublic school or agency staff member(s) or other qualified
18 personnel pursuant to subsection (ac) contracted by the school district or county office
19 or nonpublic school or agency who has been trained in behavioral analysis with an
20 emphasis on positive behavioral interventions. The "behavioral intervention case
21 manager" is not intended to be a new staffing requirement and does not create any
22 new credentialing or degree requirements. The duties of the "behavioral intervention
23 case manager" may be performed by any existing staff member trained in behavioral
24 analysis with an emphasis on positive behavioral interventions, including, but not
25 limited to, a teacher, resource specialist, school psychologist, or program specialist.

26 ~~(f)~~(g) "Behavioral intervention plan" is a written document which is developed when
27 the individual exhibits a serious behavior problem that significantly interferes with the
28 implementation of the goals and objectives of the individual's IEP. The "behavioral
29 intervention plan" shall become part of the IEP. The plan shall describe the frequency
30 of the consultation to be provided by the behavioral intervention case manager to the
31 staff members and parents who are responsible for implementing the plan. A copy of
32 the plan shall be provided to the person or agency responsible for implementation in
33 noneducational settings. The plan shall include the following:

- (1) a summary of relevant and determinative information gathered from a functional analysis assessment;
- (2) an objective and measurable description of the targeted maladaptive behavior(s) and replacement positive behavior(s);
- (3) the individual's goals and objectives specific to the behavioral intervention plan;
- (4) a detailed description of the behavioral interventions to be used and the circumstances for their use;
- (5) specific schedules for recording the frequency of the use of the interventions and the frequency of the targeted and replacement behaviors; including specific criteria for discontinuing the use of the intervention for lack of effectiveness or replacing it with an identified and specified alternative;
- (6) criteria by which the procedure will be faded or phased-out, or less intense/frequent restrictive behavioral intervention schedules or techniques will be used;
- (7) those behavioral interventions which will be used in the home, residential facility, work site or other noneducational settings; and
- (8) specific dates for periodic review by the IEP team of the efficacy of the program.
- ~~(g)~~(h) "Board" means the California State Board of Education.
- ~~(k)~~(i) "~~Department~~" CDE" means the California Department of Education.
- ~~(h)~~(j) "Certification" means authorization by the California State Superintendent of Public Instruction (~~Superintendent~~ SSPI) for a nonpublic school or nonpublic agency to service individuals with exceptional needs under a contract pursuant to the provisions of Education Code section 56366~~(c)~~(d).
- ~~(i)~~(k) "Contracting education agency," means a school district, a ~~special education local plan area~~ SELPA, a charter school participating as a member of a special education local plan area, or a county office of education.
- ~~(j)~~(l) "Credential" means any valid credential, life diploma, ~~permit~~, or document in special education or pupil personnel services issued by, or under the jurisdiction of, the California State Board of Education prior to 1970 or the California Commission on Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required.
- ~~(j)~~(m) "Department of Consumer Affairs" means the California Department of Consumer Affairs.

1 ~~(m)~~(n) “Dual enrollment” means the concurrent attendance of the individual in a
2 public education agency and a nonpublic school and/or a non public agency.

3 ~~(n)~~(o) “Feasible” as used in Education Code section 56363(a) means the
4 ~~individualized education program~~ IEP team:

5 (1) has determined the regular class teacher, special class teacher, and/or resource
6 specialist possess the necessary competencies and credentials/certificates to provide
7 the designated instruction and service specified in the ~~individualized education program~~
8 IEP, and

9 (2) has considered the time and activities required to prepare for and provide the
10 ~~designated instruction and~~ related service by the regular class teacher, special class
11 teacher, and/or resource specialist.

12 ~~(o)~~(p) “Free appropriate public education” means special education and related
13 services that:

14 (1) have been provided at public expense, under public supervision and direction
15 and without charge;:

16 (2) meets any of the standards established by state or federal law;

17 (3) include an appropriate preschool, elementary, or secondary school education in
18 California; and

19 (4) are provided in conformity with the ~~individualized education program~~ IEP
20 required under state and federal law.

21 ~~(p)~~(q) “Individual Services Agreement” means a document, prepared by the ~~local~~
22 ~~education agency~~ LEA, that specifies the length of time for which special education and
23 ~~designated instruction and~~ related services are to be provided, by nonpublic schools
24 and/or nonpublic agencies, to individuals with exceptional needs.

25 ~~(q)~~(r) “Instructional day” shall be the same period of time as constitutes the regular
26 school day for that chronological peer group unless otherwise specified in the
27 ~~individualized education program~~ IEP.

28 ~~(r)~~(s) “License” means a valid nonexpired document issued by a licensing agency
29 within the California Department of Consumer Affairs or other state licensing office
30 authorized to grant licenses and authorizing the bearer of the document to provide
31 certain professional services or refer to themselves using a specified professional title.
32 If a license is not available through an appropriate state licensing agency, a certificate
33 of registration with the appropriate professional organization at the national or state

1 level which has standards established for the certificate that are equivalent to a license
2 shall be deemed to be a license.

3 ~~(s)~~(t) “Linguistically appropriate goals, objectives, and programs” means:

4 (1)(A) ~~T~~those activities which lead to the development of English language
5 proficiency; and

6 (B) ~~T~~those instructional systems either at the elementary or secondary level which
7 meet the language development needs of the English language learner.

8 (2) For individuals whose primary language is other than English, and whose
9 potential for learning a second language, as determined by the ~~individualized education~~
10 ~~program~~ IEP team, is severely limited, nothing in this section shall preclude the
11 ~~individualized education program~~ IEP team from determining that instruction may be
12 provided through an alternative program pursuant to a waiver under Education Code
13 section 311~~(e)~~, including a program ~~provided in the individual's primary language,~~
14 provided that the ~~individualized education program~~ IEP team periodically, but not less
15 than annually, reconsiders the individual's ability to receive instruction in the English
16 language.

17 ~~(t)~~(u) “Local education agency” means a ~~public board of education or other public~~
18 ~~authority legally constituted in California for either administrative control or direction of,~~
19 ~~or to perform a service function for, public elementary or secondary schools in a city,~~
20 ~~county, township, school district, or other political subdivision of California, or such~~
21 ~~combination of school districts or counties as are recognized in California as an~~
22 ~~administrative agency for its public elementary or secondary schools~~ district, a county
23 office of education, a charter school participating as a member of a special education
24 local plan area, or a special education local plan area.

25 ~~(u)~~(v) “Local governing board” means either district or county board of education.

26 ~~(v)~~(w) “Master contract” means the legal document that binds the public education
27 agency and the nonpublic school or nonpublic agency.

28 ~~(w)~~(x) “Nonsectarian” means a private, nonpublic school or agency that is not
29 owned, operated, controlled by, or formally affiliated with a religious group or sect,
30 whatever might be the actual character of the educational program or the primary
31 purpose of the facility and whose articles of incorporation and/or by-laws stipulate that
32 the assets of such agency or corporation will not inure to the benefit of a religious
33 group.

1 ~~(x)~~(y) “Primary language” means the language other than English, or other mode of
2 communication, the person first learned, or the language which is spoken in the
3 person’s home.

4 ~~(y)~~(z) “Qualified” means that a person has met federal and state certification,
5 licensing, registration, or other comparable requirements which apply to the area in
6 which he or she is providing special education or related services, or, in the absence of
7 such requirements, the state-education-agency-approved or recognized requirements,
8 and adheres to the standards of professional practice established in federal and state
9 law or regulation, including the standards contained in the California Business and
10 Professions Code. Nothing in this definition shall be construed as restricting the
11 activities in services of a graduate needing direct hours leading to licensure, or of a
12 student teacher or intern leading to a graduate degree at an accredited or approved
13 college or university, as authorized by state laws or regulations.

14 ~~(z)~~(aa) “Related Services” means transportation, and such developmental,
15 corrective, and other supportive services (including speech pathology and audiology,
16 psychological services, physical and occupational therapy, recreation, including
17 therapeutic recreation, social work services, counseling services, including
18 rehabilitation counseling, and medical services, except that such medical services shall
19 be for diagnostic and evaluation purposes only) as required to assist an individual with
20 exceptional needs to benefit from special education, and includes the early
21 identification and assessment of disabling conditions in children. Related services
22 include, but are not limited to, Designated Instruction and Services. The list of related
23 services is not exhaustive and may include other developmental, corrective, or
24 supportive services if they are required to assist a child with a disability to benefit from
25 special education. Each related service defined under this part may include appropriate
26 administrative and supervisory activities that are necessary for program planning,
27 management, and evaluation.

28 ~~(aa)~~(ab) “Serious behavior problems” means the individual’s behaviors which are
29 self-injurious, assaultive, or cause serious property damage and other severe behavior
30 problems that are pervasive and maladaptive for which instructional/behavioral
31 approaches specified in the student’s IEP are found to be ineffective.

32 (ac) “Special education” means specially designed instruction, at no cost to the
33 parents, to meet the unique needs of individuals with exceptional needs whose

educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction.

(ad) “Specialized physical health care services” means those health services prescribed by the individual’s licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the individual to attend school.

~~(ab)~~(ae) “Specified education placement” means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or combination of public, private, home and hospital, or residential setting. The IEP team shall document its rationale for placement in other than the pupil’s school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil’s disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

~~(ae)~~(af) “~~Superintendent~~ SSPI” means the California State Superintendent of Public Instruction.

~~(af)~~(ag) “Temporary physical disability” means a disability incurred while an individual was in a regular education class and which at the termination of the temporary physical disability, the individual can, without special intervention, reasonably be expected to return to his or her regular education class.

NOTE: Authority cited: Sections 56100 and 56523~~(a)~~, Education Code.

Reference: Sections 33000, 33126, 33300, 49423.5, 56026, 56026.3, 56034, 56320, 56361, 56366, 56366.10, 56520, and 56523, Education Code; Section 2, Article IX, Constitution of the State of California; 20 USC Sections 1401~~(8)~~ and ~~(17)~~, United States Code, Title 20; and 34 CFR Sections 300.4 and 300.15 ~~12~~, Code of Federal Regulations, Title 34.

Article 5. Implementation (Program Components)

§ 3051. Standards for ~~Designated Instruction and~~ Related Services ~~(DIS)~~.

(a) General Provisions.

(1) ~~Designated instruction and~~ Related services may be provided to individuals or to

1 small groups in a specialized area of educational need, and throughout the full
2 continuum of educational settings.

3 (2) ~~Designated instruction and~~ Related services, when needed are as determined
4 by the ~~individualized education program IEP,~~ shall including the frequency and duration
5 of services.

6 (3) All entities and individuals providing ~~designated instruction and~~ related services
7 shall be qualified.

8 (4) All entities and individuals providing ~~designated instruction and~~ related services
9 shall be either:

10 (A) Employees of the school district or county office, or

11 (B) Employed under contract pursuant to Education Code sections 56365-56366.7
12 Such persons shall be certified by the ~~Department~~ CDE pursuant to ~~§~~sections 3060-
13 ~~3064-~~ 3065 of this ~~T~~itle, or

14 (C) Employees, vendors or contractors of the State Departments of Health Services
15 or Mental Health, or any designated local public health or mental agency.

16 NOTE: Authority cited: Sections 33031, 56100, ~~(a) and (i)~~ and 56366.1~~(4)(5)~~, Education
17 Code. Reference: Sections 56363 and 56365-56366.7, Education Code; and 34 CFR
18 Section 300.12, Code of Federal Regulations, Title 34.

20 **Article 6. Nonpublic, Nonsectarian School and Agency Services**

21 **§ 3060. Application for Certification.**

22 (a) Any school, person or agency desiring to obtain certification as a nonpublic
23 school or nonpublic agency shall file an application with the ~~Superintendent~~ SSPI on
24 forms developed and provided by the ~~Department~~ CDE.

25 (b) Applications to be certified as a nonpublic school or nonpublic agency shall be
26 filed at the time allowed by Education Code section 56366.1(b) and (h).

27 (c) Each nonpublic school or nonpublic agency application shall include all
28 information required by the CDE's application pursuant to Education Code section
29 56366.1(a) and (b) and:

30 (1) the name and address of the nonpublic school or nonpublic agency;

31 (2) the name of the administrator and contact person;

32 (3) the telephone and FAX numbers and e-mail address;

33 (4) for nonpublic schools, the name of the teacher(s) with a credential authorizing

1 service in special education;

2 (5) the types of disabling conditions served;

3 (6) the age, gender and grade levels served;

4 (7) the total student capacity of the program;

5 (8) a brief description of the program including entrance criteria and exit criteria for
6 transition back to the public school setting, and specific services designed to address
7 student needs;

8 (9) SBE-adopted (K-8) and standards-aligned (9-12) core-curriculum and
9 instructional materials used by general education students;

10 ~~(9)~~(10) per hour, per day or monthly fees for services provided;

11 ~~(40)~~(11) written directions and a street map describing the location of the nonpublic
12 school from the major freeways, roads, streets, thoroughfares and closest major
13 airport;

14 (12) annual operating budget, including projected costs and revenues for each
15 agency and school program, providing documentation that justifies each service fee.

16 (13) Commencing July 1, 2006, an entity-wide audit in accordance with generally
17 accepted accounting and auditing principles including each entity's costs and revenues.

18 (14) A list of all qualified staff, including subcontractors identifying their assignment
19 and qualifications in providing services to pupils.

20 ~~(41)~~(15) tuberculosis ~~expiration~~ clearance dates for all staff;

21 ~~(42)~~(16) criminal record summary or criminal history clearance dates for all staff,
22 including subcontractors, who may have contact with pupils;

23 ~~(13)~~(17) a list of school districts, county offices of education and special education
24 ~~local plan areas~~ contracting LEAs for whom the applicant has a contract to provide
25 school and/or related services;

26 ~~(44)~~(18) for out-of-state applicants, a copy of the current certification or license by
27 the state education agency to provide education services to individuals with exceptional
28 needs under the Individuals with Disabilities Education Act;

29 ~~(45)~~(19) for in-state private schools currently providing educational services to six
30 ~~(6)~~ or more students, a copy of the Private School Affidavit which has been filed with
31 ~~their county superintendent of schools~~ the CDE;

32 ~~(46)~~(20) a copy of the current school year calendar ; and weekly class schedule,
33 and daily schedule with number of instructional minutes by each grade level served;

- 1 ~~(17)~~(21) a fire inspection clearance completed within the past twelve months;
- 2 (22) a copy of a business license (if applicable);
- 3 (23) a written disaster and mass casualty plan of action;
- 4 (24) a building safety inspection clearance; and
- 5 (25) a health inspection clearance.

6 ~~(d)~~(26) In addition to the requirements set forth section 3060.2, For each nonpublic

7 school with a residential component the application shall include, as part of the

8 application for certification:

- 9 ~~(1)~~(A) the name of the residential program attached to the nonpublic school;
- 10 ~~(2)~~(B) a copy of the current residential care license;
- 11 ~~(3)~~(C) the proprietary status of the residential program;
- 12 ~~(4)~~(D) a list of all residential facilities affiliated with the nonpublic school;
- 13 ~~(5)~~(E) the total capacity of all the residential facilities affiliated with the nonpublic
- 14 school;
- 15 ~~(6)~~(F) the per day or monthly fee for the residential component; and
- 16 ~~(7)~~(G) the rate of care level (California schools only) for each residential facility
- 17 affiliated with the nonpublic school.

18 ~~(e)~~(d) The applicant shall file affidavits, assurances and clearances that verify

19 compliance with:

- 20 (1) Fair Employment Act;
- 21 (2) Drug Free Workplace Act of 1988;
- 22 (3) Section 504 of the Rehabilitation Act of 1973;
- 23 (4) Individuals with Disabilities Education Act;
- 24 (5) Civil Rights Act of 1964, as amended;
- 25 ~~(6) Education Code Section 33190 (Private School Affidavit);~~
- 26 ~~(7)~~(6) Nonsectarian status;
- 27 (7) Positive Behavior Interventions pursuant to Education Code section 49001 and
- 28 California Code of Regulations, title 5, section 3052;
- 29 (8) OSHA Bloodborne Pathogens Standards;
- 30 (9) all local, county, or state ordinances and/or statutes relating to fire, health,
- 31 sanitation, and building safety;
- 32 (10) use permit, conditional permit or zoning; and
- 33 (11) other assurances as required by state or federal law set forth in the Assurance

1 Statement in the nonpublic school or nonpublic agency application for certification.

2 ~~(f)~~(e) The applicant shall submit, with the application, a fee in accordance with
3 Education Code ~~S~~section 56366.1~~(k)~~(m).

4 ~~(g)~~(f) No fee shall be refunded to the applicant if the application is withdrawn or if
5 the Superintendent SSPI denies the application.

6 ~~(h)~~(g) Applicants shall submit a separate application for each nonpublic school or
7 non public agency site pursuant to Education Code section 56366.1(c).

8 ~~(i) A nonpublic school or agency shall be certified for a period of two years,~~
9 ~~terminating on December 31 of the second year. An annual renewal application shall~~
10 ~~be required. The renewal application shall require the nonpublic school or agency to~~
11 ~~update information that has changed since the submission of its previous application~~
12 ~~including, but not limited to, a copy of the current school year calendar and if the~~
13 ~~nonpublic school has a residential component, a copy of the current residential care~~
14 ~~license.~~

15 ~~(j) To allow transition of separate cycles between nonpublic schools and nonpublic~~
16 ~~agencies, beginning January 2000, nonpublic schools shall receive a one-time three~~
17 ~~year certification that requires annual updates. Beginning January 2000, nonpublic~~
18 ~~agencies shall begin a two-year period of certification that requires annual updates.~~
19 ~~When nonpublic school certifications expire on December 31, 2003, the two-year~~
20 ~~period of certification shall become effective thereafter.~~

21 NOTE: Authority cited: Sections 33031, 56100, and 56366~~(e)~~, and 56366.10, Education
22 Code. Reference: Section 56366.1 and 56366.10, Education Code.

24 **§ 3061. Service Fees, Finance and Maintenance of Records.**

25 All certified nonpublic schools and agencies shall:

26 ~~(a) provide the Superintendent with specified cost data, pursuant to Education Code~~
27 ~~Section 56366.7 for providing education and designated instruction and services to~~
28 ~~individuals with exceptional needs,~~

29 ~~(b)~~(a) maintain cost data in sufficient detail to verify the annual operating budget in
30 providing education and ~~designated instruction and~~ related services to individuals with
31 disabilities for each nonpublic and/or nonpublic agency site. Fiscal records shall be
32 maintained for a minimum of five years from the date of origination or until audit
33 findings have been resolved, whichever is longer;

(b) make available any books and records associated with the delivery of education and ~~designated instruction and~~ related services to individuals with exceptional needs for audit inspection or reproduction by the ~~Superintendent~~ SSPI or the ~~Superintendent's~~ SSPI's authorized representatives. These records shall include those management records associated with the delivery of education and ~~designated instruction and~~ related services, including purchase order records demonstrating that all students have received SBE-adopted (K-8) or standards-aligned (9-12) instructional materials, costs of providing services and personnel records necessary to ensure that staff qualifications comply with the requirements contained in ~~A~~article 6 of these regulations; and

(c) not charge parents for services covered in the master contract with the public education agency.

NOTE: Authority cited: Sections 33031, 56100, and 56366~~(e)~~, Education Code.

Reference: Section 56366.17, and 56366.10, Education Code.

§ 3062. Contracts and Agreements.

(a) A master contract shall be used by a ~~local education agency~~ LEA for entering into formal agreements with certified nonpublic schools or nonpublic agencies. The term of the contract shall not exceed one year. The contract shall specify the administrative and financial agreements between the ~~local education agency~~ LEA and the nonpublic school or nonpublic agency.

(b) No master contract with the ~~local education agency~~ LEA shall be contingent upon nonpublic school or nonpublic agency individual contracts or agreements with parents.

(c) The master contract shall, at a minimum, include:

(1) general provisions relating to modifications and amendments, notices, waivers, disputes, contractor's status, conflicts of interest, termination, inspection and audits, compliance with applicable state and federal laws and regulations, attendance, record-keeping, and reporting requirements;

(2) payment schedules to include, but not limited to, payment amounts, payment demand, right to withhold, and audit exceptions;

(3) indemnification and reasonable insurance requirements; and

(4) procedures and responsibilities for attendance and unexcused absences.

1 (d) All master contracts shall be re-negotiated prior to June 30.

2 (e) Services may be provided through dual enrollment in public and nonpublic
3 school or nonpublic agency programs to meet the educational requirements specified in
4 the ~~individualized education program IEP~~. The master contract or individual service
5 agreement shall specify the provider of each service. The individual with exceptional
6 needs shall be formally enrolled in both nonpublic and public school programs. The
7 nonpublic school or nonpublic agency shall be reimbursed by the ~~local educational~~
8 ~~agency LEA~~ for services as agreed upon in the contract.

9 (f) Substitute teachers shall be used consistent with the provisions of Education
10 Code ~~S~~section 56061.

11 (g) Nonpublic schools and nonpublic agencies shall provide contracting ~~local~~
12 ~~Education agencies LEAs~~ with copies of current valid California credentials and
13 licenses for staff providing services to individuals with exceptional needs.

14 (h) Nonpublic schools and agencies shall notify the ~~Superintendent SSPI~~ and
15 ~~contracting local education agencies LEAs~~ in writing within ~~forty-five (45)~~ days of any
16 change in credential or licensed personnel ~~changes~~. Failure to provide properly
17 qualified personnel to provide services as specified in the ~~individualized education~~
18 ~~program IEP~~ shall be cause for the termination of all contracts between the ~~local~~
19 ~~education agency LEA~~ and the nonpublic school or nonpublic agency.

20 NOTE: Authority cited: Sections 33031, 56100, and 56366(e), Education Code.

21 Reference: Sections 56366 and 56366.1, Education Code.

22
23 **§ 3063. Program Reviews.**

24 (a) The ~~Superintendent SSPI~~ shall conduct a validation review of the nonpublic
25 school prior to an initial conditional certification. An on-site review shall be conducted
26 within 90 days of the initial conditional certification and student enrollment. On-site
27 reviews shall be scheduled at least once every ~~four~~ three years thereafter.

28 (b) The nonpublic school, the contracting ~~education agency LEA~~, and the ~~special~~
29 ~~education local plan area SELPA~~ shall be given a minimum of ~~thirty (30)~~ days prior
30 notice before an on-site review.

31 (c) The person serving as the lead of the review team shall confer with the school
32 administrator at least 48 hours prior to the on-site review to discuss the procedures and
33 the number of days required for the review. The lead of the review team shall identify

1 those persons who are to participate in the on-site review.

2 (d) Nonpublic schools and nonpublic agencies may be visited at any time without
3 prior notice when there is substantial reason to believe that there is an immediate
4 danger to the health, safety, or welfare of a child or group of children. The
5 Superintendent SSPI shall document the concern and submit it to the nonpublic school
6 or nonpublic agency at the time of the on-site monitoring.

7 (e) On-site reviews shall include the following procedures:

8 (1) an entrance meeting to acquaint the on-site review team with the nonpublic
9 school or nonpublic agency staff and site to discuss the purpose and objectives of the
10 review;

11 (2) a review and examination of files and documents, classroom observations, and
12 interviews with the site administrator, teachers, students, volunteers, and parents to
13 determine compliance with all applicable state and federal laws and regulations; and

14 (3) an exit meeting to provide the nonpublic school or nonpublic agency with a
15 preliminary preview of the on-site review findings, verify compliance, and offer technical
16 assistance including how to resolve issues of noncompliance.

17 (f) The Superintendent SSPI shall provide the nonpublic school or nonpublic
18 agency, the contracting educational agency, and the ~~special education local plan area~~
19 SELPA with a written report within 60 days of the on-site review.

20 (g) The Superintendent SSPI shall request a written response, within a timeframe to
21 be determined by the Superintendent SSPI, but in no case to exceed 180 days, to any
22 noncompliance finding that resulted from the on-site review.

23 (h) The Superintendent SSPI shall provide a written notification, within 30 days of
24 receipt, to the nonpublic school or nonpublic agency regarding their response to each
25 noncompliance finding.

26 (i) On-site reviews shall be conducted only by personnel who have been trained by
27 Department CDE staff to perform such administrative and program examinations.

28 NOTE: Authority cited: Sections 33031, 56100, and 56366(e), Education Code.

29 Reference: Sections 56366.1 and 56366.8, Education Code.

30
31 **§ 3064. Staff Qualifications-Special Education Instruction.**

32 (a) In each classroom for which the nonpublic school is seeking certification, ~~t~~The
33 nonpublic school or nonpublic agency shall deliver instruction utilizing full time

1 personnel who possess a credential authorizing the holder to deliver special education
2 instruction according to the age range and disabling conditions of individuals with
3 exceptional needs enrolled in the nonpublic school.

4 (b) Instruction shall be directed and delivered pursuant to the IEP, the master
5 contract, and the individual service agreement.

6 (c) To provide special education instruction for individuals with exceptional needs
7 younger than three years of age, as described in Education Code, ~~P~~part 30, ~~C~~chapter
8 4.4, the nonpublic school shall comply with the provisions of Education Code ~~S~~section
9 56425 et seq., and Education Code ~~S~~section 56426.2(e) regarding adult to child ratios.

10 (d) To provide special education instruction for individuals with exceptional needs
11 between the ages of three and five years, inclusive, as described in Education Code,
12 ~~P~~part 30, ~~C~~chapter 4.45, the nonpublic school shall comply with the provisions of
13 Education Code ~~S~~section 56440 et seq., and Education Code ~~S~~section 56441.5
14 regarding appropriate instructional adult to child ratios.

15 (e) Nonpublic schools and nonpublic agencies shall comply with the personnel
16 standards and qualifications pursuant to Education Code ~~S~~section 45340 et seq., and
17 Education Code ~~S~~section 45350 et seq., regarding instructional aids and teacher
18 assistants, respectively.

19 (f) Nonpublic schools and nonpublic agencies shall comply with all of the laws and
20 regulations governing the licensed professions, in particular the provisions with respect
21 to supervision. Nonpublic schools and nonpublic agencies may use assistants to the
22 extent authorized by state and federal law.

23 NOTE: Authority cited: Sections 33031, 56100 and 56366~~(e)~~, Education Code.

24 Reference: Sections 45340, 45350, 56366.1 and 56425, Education Code.

25
26 **~~§ 3065. Staff Qualification-Related Services including Designated Instruction and~~**
27 **~~Services.~~**

28 To be eligible for certification to provide ~~designated instruction and services~~ related
29 services to for individuals with exceptional needs, nonpublic schools and agencies shall
30 meet the following requirements:

31 (a)(1) "Adapted physical education" means:

32 (A) a modified general physical education program, or a specially designed physical
33 education program in a special class; or

1 (B) consultative services provided to pupils, parents, teachers, or other school
2 personnel for the purpose of identifying supplementary aids and services or
3 modifications necessary for successful participation in the general physical education
4 program or specially designed physical education programs.

5 (2) Adapted physical education shall be provided only by personnel who possess a
6 credential issued by the California Commission on Teacher Credentialing that
7 authorizes service in adapted physical education.

8 (b)(1) "Assistive technology service" means any service that directly assists an
9 individual with exceptional needs in the selection or use of an assistive technology
10 device that is educationally necessary. The term includes the evaluation of the needs of
11 an individual with exceptional needs including a functional evaluation of the individual in
12 the individual's customary environment; coordinating and using other therapies,
13 interventions, or services with assistive technology devices, such as those associated
14 with existing education programs and rehabilitation plans and programs; training or
15 technical assistance for an individual with exceptional needs or, where appropriate, the
16 family of an individual with exceptional needs or, if appropriate, that individual's family;
17 and training or technical assistance for professionals (including individuals providing
18 education and rehabilitation services), employers or other individuals who provide
19 services to, employ, or are otherwise substantially involved in the major life functions of
20 individuals with exceptional needs.

21 (2) Assistive technology services shall be provided only by personnel who possess
22 a:

23 (A) license in Physical Therapy issued by a licensing agency within the Department
24 of Consumer Affairs, where the utilization of assistive technology services falls within
25 the scope of practice of physical therapy as defined in Business and Professions Code
26 section 2620 and implementing regulations; or;

27 ~~(B) certificate of registration as an Occupational Therapist pursuant to Business and~~
28 ~~Professions Code section 2570 et seq., where the utilization of assistive technology~~
29 ~~services falls within the scope of practice of occupational therapy; or license in~~
30 ~~Occupational Therapy issued by a licensing agency within the Department of~~
31 ~~Consumer Affairs; or~~

32 (C) license in Speech-Language Pathology issued by a licensing agency within the
33 Department of Consumer Affairs or a valid document, issued by the California

1 Commission on Teacher Credentialing, where the function of the assistive technology
2 service is augmentative communication; or

3 (D) baccalaureate degree in engineering, with emphasis in assistive technology; or

4 (E) baccalaureate degree in a related field of engineering with a graduate certificate
5 in rehabilitation technology or assistive technology; or

6 (F) certification from the Rehabilitation Engineering and Assistive Technology
7 Society of North America and Assistive Technology Provider (RESNA/ATP); or

8 (G) a certificate in assistive technology applications issued by a regionally
9 accredited post-secondary institution; or

10 (H) a credential that authorizes special education of physically handicapped,
11 orthopedically handicapped, or severely handicapped pupils.

12 (c)(1) "Audiological services" means aural rehabilitation (auditory training, speech
13 reading, language habilitation, and speech conversation) and habilitation with
14 individual pupils in the general classroom; monitoring hearing levels, auditory behavior,
15 and amplification for all pupils requiring personal or group amplification in the
16 instructional setting; planning, organizing, and implementing an audiology program for
17 individuals with auditory dysfunctions, as specified in the ~~individualized education~~
18 ~~program IEP~~; or consultative services regarding test finding, amplification needs and
19 equipment, otological referrals, home training programs, acoustic treatment of rooms,
20 and coordination of educational services to hearing-impaired individuals.

21 (2) Audiological services shall be provided only by personnel who possess:

22 (A) a license in Audiology issued by a licensing agency within the Department of
23 Consumer Affairs; or

24 (B) a credential authorizing audiology services.

25 (d) Behavior intervention shall be designed or planned only by personnel who have:

26 (1) pupil personnel services credential that authorized school counseling or school
27 psychology; or

28 (2) credential authorizing the holder to deliver special education instruction; or

29 (3) license as a Marriage, and Family, and Child Counselor Therapist, or Marriage,
30 and Family Intern under supervision of either a marriage and Family Therapist, licensed
31 Clinical Social Worker, licensed Psychologist, or a Physician who is certified in
32 psychiatry by either the Medical Board of California, the Board of Behavioral Sciences,
33 or the Board of Psychology, issued by a licensing agency within the Department of

1 Consumer Affairs; or

2 (4) license as a Clinical Social Worker, or Associate Clinical Social Worker under
3 supervision of either a licensed Clinical Social Worker or a licensed Mental Health
4 Professional by the Board of Behavioral Sciences, issued by a licensing agency within
5 the Department of Consumer Affairs; or

6 (5) license as an Educational Psychologist issued by a licensing agency within the
7 Department of Consumer Affairs; or

8 (6) license in psychology, or who are working under supervision of a licensed
9 psychologist, as a Psychologist issued by a licensing agency within both regulated by
10 the Board of Psychology, within the Department of Consumer Affairs; or

11 (7) master's degree issued by a regionally accredited post-secondary institution in
12 education, psychology, counseling, behavior analyst, behavior science, human
13 development, social work, rehabilitation, or in a related field.

14 (e) To be eligible for certification to provide behavior intervention, including
15 implementation of behavior modification plans, but not including development or
16 modification of behavior intervention plans, a nonpublic school or agency shall deliver
17 those services utilizing personnel who:

18 (1) possess the qualifications under subdivision (d); or

19 (2)(A) are under the supervision of personnel qualified under subdivision (d);

20 (B) possess a high school diploma or its equivalent; and

21 (C) receive the specific level of supervision required in the pupil's IEP.

22 (f)(1) "Counseling and guidance" means educational counseling in which the pupil is
23 assisted in planning and implementing his or her immediate and long-range educational
24 program; career counseling in which the pupil is assisted in assessing his or her
25 aptitudes, abilities, and interests in order to make realistic career decisions; personal
26 counseling in which the pupil is helped to develop his or her ability to function with
27 social and personal responsibility; or counseling with parents and staff members on
28 learning problems and guidance programs for pupils.

29 (2) Counseling and guidance shall be provided only by personnel who possess a:

30 (A) license as a Marriage, and Family, and Child Counselor Therapist, or Marriage,
31 and Family Intern under supervision of either a marriage and Family Therapist, licensed
32 Clinical Social Worker, licensed Psychologist, or a Physician who is certified in
33 psychiatry by either the Medical Board of California, the Board of Behavioral Sciences,

1 or the Board of Psychology, issued by a licensing agency within the Department of
2 Consumer Affairs; or

3 (B) license as a Clinical Social Worker, or Associate Clinical Social Worker under
4 supervision of either a licensed Clinical Social Worker or a licensed Mental Health
5 Professional by the Board of Behavioral Sciences, issued by a licensing agency within
6 the Department of Consumer Affairs; or

7 (C) license as an Educational Psychologist issued by a licensing agency within the
8 Department of Consumer Affairs; or

9 (D) license in psychology, or who are working under supervision of a licensed
10 psychologist, as a Psychologist issued by a licensing agency both regulated by the
11 Board of Psychology, within the Department of Consumer Affairs; or

12 (E) pupil personnel services credential, which authorized school counseling or
13 school psychology.

14 (g)(1) "Early education programs for children with disabilities" means the program
15 and services specified by Education Code, ~~P~~part 30, section 56425 et seq.

16 (2) Early education programs for children with disabilities shall be provided only by
17 personnel who meet the appropriate personnel qualifications set forth in this ~~A~~article
18 and comply with all other requirements of Education Code, ~~C~~chapter 4.4 commencing
19 with ~~S~~section 56425.

20 (h)(1) "Health and nursing services" means:

21 (A) managing the child's health problems on the school site;

22 (B) consulting with pupils, parents, teachers, and other personnel;

23 (C) group and individual counseling with parents and pupils regarding health
24 problems;

25 (D) maintaining communication with health agencies providing care to individuals
26 with disabilities; or

27 (E) providing services by qualified personnel.

28 (2) Health and nursing services shall be provided only by personnel who possess:

29 (A) a license as a Registered Nurse, issued by a licensing agency within the
30 Department of Consumer Affairs; or

31 (B) a license as a Vocational Nurse, issued by a licensing agency within the
32 Department of Consumer Affairs, under the supervision of a licensed ~~R~~registered
33 ~~N~~nurse; or

1 (C) a school nurse credential; or

2 (D) demonstrated competence in cardio-pulmonary resuscitation, current knowledge
3 of community emergency medical resources, and skill in the use of equipment and
4 performance of techniques necessary to provide specialized physical health care
5 services for individuals with exceptional needs. In addition, possession of training in
6 these procedures to a level of competence and safety that meet the objectives of the
7 training as provided by the school nurse, public health nurse, licensed physician and
8 surgeon, or other training programs. "Demonstrated competence in cardio-pulmonary
9 resuscitation" means possession of a current valid certificate from an approved
10 program; or

11 (E) a valid license, certificate, or registration appropriate to the health service to be
12 designated, issued by the California agency authorized by law to license, certificate, or
13 register persons to practice health service in California.

14 (i)(1) "Home and hospital services" means instruction delivered to children with
15 disabilities, individually, in small groups, or by teleclass, whose medical condition such
16 as those related to surgery, accidents, short-term illness or medical treatment for a
17 chronic illness prevents the individual from attending school.

18 (2) Home or hospital instruction shall be provided only by personnel who possess a
19 valid teaching credential issued by the California Commission on Teacher Credentialing
20 authorizing the holder to deliver special education instruction according to age range
21 and disabling condition of the individual(s).

22 (j)(1) "Language and speech development and remediation" means screening,
23 assessment, ~~individualized education program~~ IEP development, and direct speech
24 and language services delivered to children with disabilities who demonstrate difficulty
25 understanding or using spoken language to such an extent that it adversely affects their
26 educational performance and cannot be corrected without special education and
27 related services.

28 (2) Language and speech development and remediation shall be provided only by
29 personnel who possess:

30 (A) a license in Speech-Language Pathology issued by a licensing agency within
31 the Department of Consumer Affairs; or

32 (B) a credential authorizing language or speech services.

33 (k)(1) "Occupational therapy" means the use of various treatment modalities

1 including self-help skills, language and educational techniques, as well as sensory
2 motor integration, physical restoration methods, and pre-vocation exploration to
3 facilitate physical and psychosocial growth and development.

4 (2) Occupational therapy shall be provided only by personnel who ~~have certification~~
5 ~~in good standing with the National Board for Certification in Occupational Therapy, Inc.~~
6 ~~as a registered occupational therapist (OTR) or certified occupational therapy assistant~~
7 ~~(COTA).~~ possess a license in occupational therapy issued by a licensing agency within
8 the Department of Consumer Affairs. Services provided by a COTA shall be supervised
9 by an OTR in accordance with professional standards outlined by the American
10 Occupational Therapy Association.

11 (l)(1) "Orientation and mobility instruction" means specialized instruction for
12 individuals in orientation and mobility techniques, or consultative services to other
13 educators and parents regarding instructional planning and implementation of the
14 ~~individualized education program IEP~~ relative to the development of orientation and
15 mobility skills and independent living skills.

16 (2) Orientation and mobility instruction shall be provided only by personnel who
17 possess a credential that authorizes services in orientation and mobility instruction.

18 (m)(1) "Parent counseling and training" means assisting parents in understanding
19 the special needs of their child and providing parents with information about child
20 development.

21 (2) Parent counseling and training shall be provided only by personnel who possess
22 a:

23 (A) credential that authorizes special education instruction; or

24 (B) credential that authorizes health and nursing services; or

25 (C) license as a Marriage, and Family, and Child Counselor Therapist, or Marriage,
26 and Family Intern under supervision of either a marriage and Family Therapist, licensed
27 Clinical Social Worker, licensed Psychologist, or a Physician who is certified in
28 psychiatry by either the Medical Board of California, the Board of Behavioral Sciences,
29 or the Board of Psychology, issued by a licensing agency within the Department of
30 Consumer Affairs; or

31 (D) license as a Clinical Social Worker, or Associate Clinical Social Worker under
32 supervision of either a licensed Clinical Social Worker or a licensed Mental Health
33 Professional by the Board of Behavioral Sciences, issued by a licensing agency within

1 the Department of Consumer Affairs; or

2 (E) license as an Educational Psychologist, issued by a licensing agency within the
3 Department of Consumer Affairs; or

4 (F) license as a ~~Psychologist~~, or who are working under the supervision of a
5 licensed psychologist, both issued by a licensing agency regulated by the Board of
6 Psychology, within the Department of Consumer Affairs; or

7 (G) pupil personnel services credential that authorizes school counseling or school
8 psychology or school social work.

9 (n)(1) "Physical therapy" means the:

10 (A) administration of active, passive, and resistive therapeutic exercises and local or
11 general massage, muscle training and corrective exercises and coordination work;

12 (B) administration of hydrotherapy treatments;

13 (C) assistance in administering various types of electrotherapy including ultraviolet,
14 infrared, diathermy and inductothermy;

15 (D) teaching of parents of hospitalized pupils exercises which are to be continued at
16 home and interpret to them the significance of physical therapy services; and

17 (E) instruction in walking, standing, balance, use of crutches, cane, or walker and in
18 the care of braces and artificial limbs.

19 (2) Physical therapy shall be provided only by personnel who possess a valid
20 license in Physical Therapy issued by a licensing agency within the Department of
21 Consumer Affairs.

22 (o)(1) "Psychological services" means:

23 (A) ~~psychological counseling services~~ provided to children with disabilities involving
24 the application of psychological principles, methods, and procedures of understanding,
25 predicting, and influencing behavior, such as the principles pertaining to learning,
26 perception, motivation, emotions, and interpersonal relationships; and the methods and
27 procedures of interviewing, counseling, psychotherapy, behavior modification, and
28 hypnosis; and of constructing, administering, and interpreting tests of mental abilities,
29 aptitudes, interests, attitudes, personality characteristics, emotions, and motivations;

30 ~~(B) consultative services to parents, pupils, teacher, and other school personnel; or~~

31 ~~(C) planning and implementing a program of psychological counseling for children~~
32 ~~with disabilities and parents by a credentialed or licensed psychological or other~~
33 ~~qualified personnel.~~

1 ~~(B)(D)~~ This term does not include assessment services and the development of an
2 individualized education program IEP.

3 (2) Psychological services, other than assessment and development of the
4 individualized education program IEP, shall be provided only by personnel who
5 possess a license in psychology, or who are working under supervision of a licensed
6 psychologist both regulated by the Board of Psychology, within the Department of
7 Consumer Affairs.:

8 ~~(A) license as a Marriage, Family, and Child Counselor, issued by a licensing~~
9 ~~agency within the Department of Consumer Affairs; or~~

10 ~~(B) license as a Clinical Social Worker, issued by a licensing agency within the~~
11 ~~Department of Consumer Affairs; or~~

12 ~~(C) license as an Educational Psychologist, issued by a licensing agency within the~~
13 ~~Department of Consumer Affairs; or~~

14 ~~(D) license in Psychology, issued by a licensing agency within the Department of~~
15 ~~Consumer Affairs; or~~

16 ~~(E) pupil personnel services credential that authorizes school psychology.~~

17 (p)(1) "Recreation services" means:

18 (A) therapeutic recreation and specialized instructional programs designed to assist
19 pupils to become as independent as possible in leisure activities, and when possible
20 and appropriate, facilitate the pupil's integration into general recreation programs;

21 (B) recreation programs in schools and the community which are those programs
22 that emphasize the use of leisure activity in the teaching of academic, social, and daily
23 living skills, the provision of nonacademic and extracurricular leisure activities, and the
24 utilization of community recreation programs and facilities; or

25 (C) leisure education programs which are those specific programs designed to
26 prepare the pupil for optimum independent participation in appropriate leisure activities,
27 and develop awareness of personal and community leisure resources.

28 (2) Recreation services shall be provided only by personnel who possess a:

29 (A) certificate, issued by the California Board of Recreation and Park Certification;
30 or

31 (B) certificate issued by the National Council for Therapeutic Recreation; or

32 (C) the National Recreation and Park Association, authorizing services in recreation
33 or therapeutic recreation.

1 (q)(1) "Social worker services" means:

2 (A) individual and group counseling with the individual and his or her immediate
3 family;

4 (B) consultation with pupils, parents, teachers, and other personnel regarding the
5 effects of family and other social factors on the learning and developmental
6 requirements of children with disabilities; or

7 (C) developing a network of community resources, making appropriate referral and
8 maintaining liaison relationships among the school, the pupil, the family, and the
9 various agencies providing social income maintenance, employment development,
10 mental health, or other developmental services.

11 (2) Social worker services shall be provided only by personnel who possess a:

12 (A) license as a Clinical Social Worker, or Associate Clinical Social Worker under
13 supervision of either a licensed Clinical Social Worker or a licensed Mental Health
14 Professional by the Board of Behavioral Sciences, ~~issued by a licensing agency~~ within
15 the Department of Consumer Affairs; or

16 (B) license as a Marriage, and Family, and Child Counselor Therapist, or Marriage,
17 and Family Intern under supervision of either a marriage and Family Therapist, licensed
18 Clinical Social Worker, licensed Psychologist, or a Physician who is certified in
19 psychiatry by either the Medical Board of California, the Board of Behavioral Sciences,
20 or the Board of Psychology, ~~issued by a licensing agency~~ within the Department of
21 Consumer Affairs; or

22 (C) credential authorizing school social work.

23 (r)(1) "Specialized driver training instruction" means instruction to children with
24 disabilities to supplement the general driver-training program.

25 (2) Specialized driver education and driver training shall be provided only by
26 personnel who possess a credential that authorizes service in driver education and
27 driver training.

28 (s)(1) "Specially designed vocational education and career development" means:

29 (A) providing prevocational programs and assessing work-related skills, interests,
30 aptitudes, and attitudes;

31 (B) coordinating and modifying the general vocational education program;

32 (C) assisting pupils in developing attitudes, self-confidence, and vocational
33 competencies to locate, secure, and retain employment in the community or shelter

1 environment, and to enable such individuals to become participating members of the
2 community;

3 (D) establishing work training programs within the school and community;

4 (E) assisting in job placement;

5 (F) instructing job trainers and employers as to the unique needs of the individuals;

6 (G) maintaining regularly scheduled contact with all work stations and job-site
7 trainers; or

8 (H) coordinating services with the Department of Rehabilitation, the Employment
9 Development Department, and other agencies as designated in the ~~individualized~~
10 ~~education program~~ IEP.

11 (2) Specially designed vocation education and career development shall be
12 provided only ~~be~~ by personnel who possess a:

13 (A) adult education credential with a career development authorization; or

14 (B) credential that authorizes instruction in special education or vocational
15 education; or

16 (C) pupil personnel services credential that authorizes school counseling.

17 (t) Specialized interpreting or transcribing services for pupils with low incidence
18 disabilities shall be provided only by the following personnel:

19 (1) Interpreters for deaf and hard of hearing pupils shall possess certification issued
20 by the Registry of Interpreters for the Deaf or equivalent, or if providing cued speech
21 services, by any certifying body recognized by the National Cued Speech Association;
22 and

23 (2) Transcribers for visually impaired pupils shall have a certificate issued by the
24 Library of Congress as a Braille Transcriber.

25 (u)(1) "Specialized services for low-incidence disabilities" means:

26 (A) specially designed instruction related to the unique needs of pupils with low-
27 incidence disabilities; or

28 (B) specialized services related to the unique needs of individuals with low-
29 incidence disabilities.

30 (2) Specialized services for pupils with low-incidence disabilities shall be provided
31 only by personnel who possess a credential that authorizes services in special
32 education or clinical or rehabilitation services in the appropriate area of disability.

33 (v)(1) "Vision services" means:

(A) adaptations in curriculum, media, and the environment, as well as instruction in special skills; or

(B) consultative services to pupils, parents, teachers, and other school personnel.

(2) Vision services shall be provided only by personnel who possess:

(A) a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the service rendered; or

(B) a valid credential authorizing vision instruction or services.

(w) Other ~~designated instruction and~~ related services not identified in this section shall only be provided by staff who possess a:

(1) license issued by a licensing agency by an entity within the Department of Consumer Affairs authorizing the licensee to provide the specific service or another state licensing office; or

(2) possess a credential by the California Commission on Teacher Credentialing authorizing the service or is qualified to provide the service.

NOTE: Authority cited: Sections 33031, 56100 and 56366(e), Education Code.

Reference: Sections 2620, 2903, 2905 and 17505.2, Business and Professions Code;

Section 56366.1, Education Code; 20 USC 1401, and 34 CFR 300.18, and 34 CFR

300.156(b)(1) ~~Sections 300.136 and 300.23, Title 34, Code of Federal Regulations.~~

§ 3066. Out-of-State Nonpublic Schools/Agencies.

For purposes of determining eligibility for certification for a nonpublic school or nonpublic agency located in a state other than California, the Department CDE may accept a valid certificate, credential, license, or registration issued by another state for the requirements set forth in ~~S~~sections 3064 and 3065.

NOTE: Authority cited: Sections 33031, 56100 and 56366(e), Education Code.

Reference: Section 56366.1, Education Code.

§ 3067. Certification Status.

(a) Certification shall become effective on the date when the nonpublic school or nonpublic agency meets all the application requirements and is approved by the Superintendent SSPI except as specified in ~~S~~subdivision 3067(b)(d)(1).

(b) Certification may be retroactive, provided the nonpublic school or nonpublic

1 agency met all the requirements for certification on the date the retroactive certification
2 is effective.

3 (c) The certification status of a nonpublic school or nonpublic agency shall be one of
4 the following:

5 (1) approved certification with no conditions or limitations;

6 (2) conditional certification for a limited period of time. A conditional certification
7 indicates that the nonpublic school or nonpublic agency has not met all the certification
8 requirements

9 (3) suspended certification for a defined period of time pursuant to the provisions of
10 Education Code ~~S~~section 56366.4. Nonpublic schools or nonpublic agencies with a
11 suspended certification cannot accept new pupils.

12 (d) Any ~~local education agency~~ LEA that contracts with a certified nonpublic school
13 or nonpublic agency may request the ~~Superintendent~~ SSPI to review the status of the
14 nonpublic school or nonpublic agency. Such requests shall be in writing and a copy
15 shall be sent to the nonpublic school or nonpublic agency.

16 NOTE: Authority cited: Sections 33031, 56100 and 56366(e), Education Code.

17 Reference: Sections 56366.1 and 56366.4, Education Code.

18
19 **§ 3068. Appeals and Waivers.**

20 (a) Within ~~twenty~~ (20) working days of receipt of notice, nonpublic schools or
21 nonpublic agencies (appellant) may file a written petition (appeal), on forms provided by
22 the ~~Superintendent~~ SSPI, to request a review of the decision to deny, suspend, or
23 revoke certification pursuant to Education Code ~~S~~section 56366.6

24 (b) All appeals shall be mailed to the Office of Administrative Hearings (OAH),
25 Department of General Services.

26 (c) There shall be three options for appealing the denial, suspension, or revocation
27 of certification. The nonpublic school or nonpublic agency may request:

28 (1) a written review of the decision to deny, suspend, or revoke certification. The
29 ~~Office of Administrative Hearings~~ OAH shall analyze the documentation provided by the
30 appellant and materials provided by the ~~Department~~ CDE and render a decision;

31 (2) a written review with an oral argument. The ~~Office of Administrative Hearings~~
32 OAH shall analyze the documentation provided by the appellant and materials provided
33 by the ~~Department~~ CDE. The appellant shall also appear before a hearing officer, on a

1 date scheduled by the ~~Office of Administrative Hearings~~ OAH, to provide oral testimony
2 in support of the appeal. The ~~Department~~ CDE shall also attend the hearing and
3 present testimony to support the decision to deny, suspend, or revoke certification. The
4 hearing officer may ask questions of either party. All testimony shall be tape-recorded;
5 or

6 (3) an oral hearing. The appellant shall appear before a hearing officer, on a date
7 scheduled by the ~~Office of Administrative Hearings~~ OAH, to provide oral testimony in
8 support of the appeal. The ~~Department~~ CDE shall also attend the hearing and present
9 testimony to support the decision to deny, suspend, or revoke certification. The hearing
10 officer shall provide the opportunity for both parties to review evidence, call witnesses,
11 and cross-examine witnesses. If the appellant fails to appear at the hearing, the
12 petitioner waives the right to a future hearing, unless the hearing officer agrees to
13 reschedule the hearing because of extenuating circumstances.

14 (d) The ~~Office of Administrative Hearings~~ OAH shall issue the decision, in writing,
15 simultaneously to the appellant and to the ~~Department~~ CDE within ~~thirty~~ (30) working
16 days after receipt of all materials and evidence. This shall be the final administrative
17 decision.

18 (e) ~~Local education agencies~~ LEAs and nonpublic school and agencies may request
19 the ~~Superintendent~~ SSPI to waive Education Code sections 56365, 56366, 56366.3,
20 and 56366.6 ~~and 56366.7~~. Such petitions shall be made in accordance with the
21 provisions of Education Code section 56366.2 and shall be necessary in order to
22 provide services to individuals with exceptional needs consistent with their
23 ~~individualized education program~~ IEP.

24 NOTE: Authority cited: Sections 33031, 56100, and 56366(e), Education Code.

25 Reference: Sections 56101, 56366.2, and 56366.6, Education Code.

27 **§ 3069. Annual Review of Individualized Education Program (IEP).**

28 Review of the pupil's ~~individualized education program~~ IEP shall be conducted at
29 least annually by the public education agency. The public education agency shall
30 ensure that review schedules are specified in the ~~individualized education program~~ IEP
31 and contract for the pupil. An elementary school district shall notify a high school district
32 of all pupils placed in a nonpublic school or agency programs prior to the annual review
33 of the ~~individualized education program~~ IEP for each pupil who may transfer to the high

1 school district.

2 NOTE: Authority cited: Sections 56100(a), (i) and (j), Education Code; ~~20 U.S.C.~~
3 ~~1414(c)(2)(B)~~; and ~~34 C.F.R. 300.600~~. Reference: Sections 56345, 56365-56366.5,
4 Education Code; and ~~34 C.F.R. 300.4, 300.302, 300.317, 300.323-324 300.343-348~~
5 and ~~300.145-148 400-403~~.

6
7 **§ 3070. Graduation.**

8 When an individual with exceptional needs meets public education agency
9 requirements for completion of the prescribed course of study ~~and adopted differential~~
10 ~~proficiency standards as designated in the pupil's individualized education program~~
11 IEP, the public education agency which developed the ~~individualized education~~
12 ~~program IEP~~ shall award the diploma.

13 NOTE: Authority cited: Sections 56100(a), (i) and (j), Education Code; ~~20 U.S.C.~~
14 ~~1414(c)(2)(B)~~; and ~~34 C.F.R. 300.600~~. Reference: Sections 56345, 56365-56366.5,
15 Education Code; and ~~34 C.F.R. 300.4, 300.302, 300.317, 300.323-324 343-348~~ and
16 ~~300.145-148 400-403~~.

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32 01-11-08 [California Department of Education]

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1779 **VERSION:** MAY 5, 2008 **INTRODUCED** MARCH 13, 2008

AUTHOR: COMMITTEE ON
BUSINESS, PROFESSIONS
AND ECONOMIC
DEVELOPMENT **SPONSOR:** CAMFT

RECOMMENDED POSITION: NONE

SUBJECT: HEALING ARTS OMNIBUS BILL

Existing Law:

- 1) Requires the Board of Behavioral Sciences (board) to disclose the suspension and revocation of licenses issued by the board and other related enforcement action taken against a licensee of the board. (B&P Code §27(a)and(b))
- 2) States that the board may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board where the licensee is in violation of the applicable licensing act or regulations. (B&P Code § 125.9(a))
- 3) Defines a "citable offense" as any violation of the statutes and regulations enforced by the board. (16 CCR § 1886.40(a))
- 4) Allows the Executive Officer of the board to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed marriage and family therapist (MFT), licensed educational psychologist, licensed clinical social worker, MFT intern, or associate clinical social worker of the statutes and regulations enforced by the board. (16 CCR §1886)

This Bill:

- 1) Makes several non-controversial, minor, non-substantive or technical changes to various miscellaneous provisions pertaining to the health-related regulatory boards of the Department of Consumer Affairs.
- 2) Prohibits the board from publishing on the internet for more than five years the final determination of a citation and fine of one thousand five hundred dollars (\$1,500) or less against a registrant or licensee. (B&P Code § 4990.09)

Comment:

- 1) **Purpose of this bill.** Currently there is no time limit associated with posting information relating to citations on the internet. Under current law a board licensee could be cited for a minor violation, such as failing to send a change of address, and that information would

May 14, 2008

remain posted on the internet indefinitely. This information would be available to anyone with access to a computer, including, potential employers, managed care organizations and prospective patients.

This bill would require the board to remove from the internet information relating to lesser citations and fines after five years from the date of the issuance of the citation. Because the issuance of a citation and fine is an administrative action, and hence a violation that has not reached the level of disciplinary action, allowing this information to be removed from the internet after five years would not have an effect on consumer protection.

- 2) Nature of Citations.** Generally citations issued by the Executive Officer with fines under one thousand five hundred dollars (\$1,500) are for offenses minor in nature. Board regulation stipulates that a citation may not be issued for a violation that by nature and/or severity of the circumstance necessitates the revocation or restriction of the license to ensure consumer protection (16 CCR §1886.50). Typical violations that may result in the issuance of a citation are minor advertising offenses, continuing education violations and minor confidentiality problems. About one hundred (100) citations are issued a year, for varying violations, with differing associated fines, depending on the seriousness of the offense.

Fines assessed for citable offenses may not exceed two thousand five hundred dollars (\$2,500) except in the special circumstances listed below (16 CCR §1886.40):

- a) Violations involving a minor, elder or dependent adult, or a person with a physical or mental disability;
- b) Violations involving unlicensed practice or unlawful breach of confidentiality;
- c) Violations relating to fraudulent billing; and,
- d) Violations that involve a cited person that has a history of two or more prior citations for similar violations.

In the special circumstances noted above, the Executive Officer may assess a fine of not more than five thousand dollars (\$5,000).

Additionally, the executive officer must give consideration to a number of factors when issuing a citation, including but not limited to, the gravity of the violation, evidence that the violation was or was not willful, and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation.

- 3) The Issuance of a Citation is Not a Disciplinary Action.** The issuance of a citation is not a disciplinary action, but an administrative action. The Executive Officer is authorized to determine when and against whom a citation will be issued. The citation must inform the cited person of the right to contest the citation. An administrative hearing or an informal citation conference must be provided to the cited person upon request.

Disciplinary Action is the result of an accusation filed against a licensee pursuant to the Administrative Procedures Act (Government Code §11503) for violations of the unprofessional conduct statutes. Disciplinary action may result in the board denying a license or a registration, or a license or registration being suspended, revoked, or placed on probation.

- 4) Support and Opposition.**

Support:

Board of Podiatric Medicine

Board of Registered Nursing
Medical Board of California

Opposition:
None on file.

5) History

2008

May 13 In Assembly. Read first time. Held at Desk.
May 12 Read third time. Passed. (Ayes 38. Noes 0.) To Assembly.
May 6 Read second time. To third reading.
May 5 Read third time. Amended. To second reading.
Apr. 29 Read second time. To third reading.
Apr. 28 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Apr. 17 Set for hearing April 28.
Apr. 16 Read second time. Amended. Re-referred to Com. on APPR.
Apr. 15 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 8. Noes 0. Page 3426.)
Apr. 1 Set for hearing April 14.
Mar. 27 To Com. on B., P. & E.D.
Mar. 14 From print. May be acted upon on or after April 13.
Mar. 13 Introduced. Read first time. To Com. on RLS. for assignment. To print.

ATTACHMENT

16 CCR sections 1886-1886.70

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California Code of Regulations Title 16, Sections 1886 – 1886.70

§1886. AUTHORITY TO ISSUE CITATIONS AND FINES

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed marriage and family therapist (MFT), licensed educational psychologist (LEP), licensed clinical social worker (LCSW), MFT Intern, or Associate Clinical Social Worker of the statutes and regulations enforced by the Board of Behavioral Sciences.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.10. CITATIONS FOR UNLICENSED PRACTICE

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 302(d) of the Code, who are performing or who have performed services for which a license is required under the statutes and regulations enforced by the Board of Behavioral Sciences. Each citation issued for unlicensed activity shall contain an order of abatement. Where appropriate, the executive officer shall levy a fine for such unlicensed activity in accordance with section 1886.40 of these regulations. The provisions of sections 1886-1886.80 shall apply to the issuance of citations for unlicensed activity under this section. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 125.95, 148, 149 and 302(d), Business and Professions Code.

§1886.20. CITATION FORMAT

A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation. The citation shall be served upon the cited person personally or by certified mail in accordance with the provisions of Section 11505 (c) of the Government Code.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.30. CITATION FACTORS

In assessing an administrative fine or issuing an order of abatement, the executive officer of the board shall give due consideration to the following factors:

- (a) The gravity of the violation.
- (b) The good or bad faith exhibited by the cited person.

- (c) The history of previous violations of the same or similar nature.
- (d) Evidence that the violation was or was not willful.
- (e) The extent to which the cited person has cooperated with the board's investigation.
- (f) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (g) Any other factors as justice may require.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.40. AMOUNT OF FINES

(a) For purposes of this section, a "citable offense" is defined as any violation of the statutes and regulations enforced by the Board of Behavioral Sciences, including Chapters 13 and 14 of Division Two of the Business and Professions Code and Title 16, Division 18, California Code of Regulations.

(b) The executive officer of the board may assess fines for citable offenses which shall not exceed two thousand five hundred dollars (\$2,500) for each investigation except as otherwise provided in this section. The executive officer shall not impose any duplicate fines for the same violation.

(c) The executive officer of the board may assess fines for citable offenses which shall not exceed five thousand (\$5,000) for each investigation if the violation or count includes one or more of the following circumstances:

(1) The cited person has a history of two or more prior citations for similar violations, except for citations withdrawn or dismissed after appeal.

(2) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.

(3) The citation is for a violation or violations involving a minor, elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.

(4) The citation involves unlicensed practice.

(5) The citation involves an unlawful or unauthorized breach of confidentiality.

(d) The executive officer of the board may assess fines which shall not exceed five thousand dollars (\$5,000) for each violation or count if the violation or count involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

Note: Authority cited: Sections 125.9, 148, 149, 4980.60, 4987 and 4990.14, Business and Professions Code.
Reference: Sections 123, 125, 125.9, 136, 141, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43,

4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, 4986.10, 4986.50, 4986.70, 4987.7, 4987.8, 4987.9, 4988, 4988.1, 4988.5, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.20, 4998.2, 4998.3, 4998.4, Business and Professions Code; and Section 15630, Welfare and Institutions Code.

§1886.50. EXCEPTIONS

A citation shall not be issued in any of the following circumstances:

- (a) The violation is of such a nature and/or severity that revocation of the license or restrictions on the cited person are necessary in order to ensure consumer protection.
- (b) The cited person failed to comply with any requirement of any previous citation, including any order of abatement or fine.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code.

§1886.60. COMPLIANCE WITH CITATION/ORDER OF ABATEMENT

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the executive officer of the board. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) If a citation is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the board or other appropriate judicial action being taken against the cited person.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

Note: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code; Section 11505(c), Government Code.

§1886.70. CONTESTED CITATIONS AND REQUEST FOR A HEARING OR INFORMAL CITATION CONFERENCE

(a) If a cited person wishes to contest the citation, assessment of the administrative fine, or order of abatement, the cited person shall, within thirty (30) days after service of the citation, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the citation, as provided for in subdivision (b)(4) of Section 125.9 of the Code.

(b) In addition to or instead of requesting an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited person may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the executive officer or his/her designee.

(c) Upon receipt of a written request for an informal citation conference, the executive officer or his/her designee shall, within 60 days, hold an informal citation conference with the cited person. The cited person may be accompanied and represented at the informal citation conference by an attorney or other authorized representative.

(d) If an informal citation conference is held, the request for an administrative hearing shall be deemed to be withdrawn and the executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued, at the conclusion of the informal citation conference. If affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and his/her counsel, if any, within 10 days from the date of the informal citation conference.

(e) If a cited person wishes to contest an affirmed or modified citation, the cited person shall, within 30 days after service of the citation, contest the affirmed or modified citation by submitting a written request for an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, to the executive officer or his or her designee. An informal citation conference shall not be held on affirmed or modified citations.

NOTE: Authority cited: Sections 125.9, 148, 149 and 4980.60, 4987, 4990.14, Business and Professions Code.
Reference: Sections 125.9, 148 and 149, Business and Professions Code.

AMENDED IN SENATE MAY 5, 2008
AMENDED IN SENATE APRIL 16, 2008

SENATE BILL

No. 1779

Introduced by Committee on Business, Professions and Economic Development (Senators Ridley-Thomas (Chair), Aanestad, Calderon, Corbett, Denham, Florez, Harman, Simitian, and Yee)

March 13, 2008

An act to amend Sections 683, 733, 800, 2089.5, 2096, 2102, 2107, 2135, 2175, 2307, 2335, 2486, 2488, 2570.5, 2760.1, 3625, 3633.1, 3635, 3636, 3685, 3750.5, 3753.5, 3773, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4174, 4231, 4301, 4305, 4329, and 4330 of, to amend and renumber Section 2570.185 of, to add Sections ~~2570.35~~, 2570.36, 4036.5, and 4990.09 to, and to repeal Sections 2172, 2173, and 2174 of, the Business and Professions Code, to amend Section 8659 of the Government Code, and to amend Sections 11150 and 11165 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1779, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

(2) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, in the Department of Consumer Affairs. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met.

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2069. The bill would revise the requirements for a petition for reinstatement or modification, as specified.

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The

bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(3) Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of occupational therapists by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in a patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice.

This bill would require an occupational therapy assistant to document in a patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign a patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would ~~require an employer of an occupational therapy practitioner to report to the board the suspension or termination for cause of any practitioner in its employ, or be subject to a specified administrative fine, and would~~ require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(4) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing in the Department of Consumer Affairs. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(5) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine in the Department of Consumer Affairs. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the

application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(6) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to deny, suspend, or revoke a license to practice respiratory therapy if the licensee obtains or possesses in violation of the law, except as directed by a licensed physician and surgeon, dentist, or podiatrist, or furnishes or administers or uses a controlled substance or dangerous drug, as defined. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and prosecution. Existing law requires an applicant for renewal of a respiratory care practitioner license to notify the board of specified information.

This bill would revise the board's authority to deny, suspend, or revoke a license to practice respiratory therapy for obtaining, possessing, using, administering, or furnishing controlled substances or dangerous drugs, and would also authorize the board to deny, suspend, or revoke a license if a licensee uses any controlled substance, dangerous drug, or alcoholic beverage to an extent or manner dangerous or injurious to himself or herself, the public, or another person, or to the extent that it impairs his or her ability to practice safely. The bill would also authorize the board to direct a practitioner or applicant who is found to have

violated a term or condition of board probation to pay the costs for investigation and prosecution. The bill would require an applicant for renewal of a respiratory care practitioner license to cooperate in furnishing additional information to the board, as requested, and would provide that, if a licensee fails to furnish the information within 30 days of a request, his or her license would become inactive until the information is received.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(7) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy in the Department of Consumer Affairs.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, it would impose a state-mandated local program.

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(8) Existing law provides for the licensure and regulation of psychologists, social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of \$1,500 or less for more than 5 years from the date of issuance of the citation.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 683 of the Business and Professions Code
2 is amended to read:

683. (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.

SEC. 2. Section 733 of the Business and Professions Code is amended to read:

733. (a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough

1 to the site from which the prescription or order is transferred, to
2 ensure the patient has timely access to the drug or device.

3 (C) Return the prescription to the patient and refer the patient.
4 The licentiate shall make a reasonable effort to refer the patient to
5 a pharmacy that stocks the prescription drug or device that is near
6 enough to the referring site to ensure that the patient has timely
7 access to the drug or device.

8 (3) The licentiate refuses on ethical, moral, or religious grounds
9 to dispense a drug or device pursuant to an order or prescription.
10 A licentiate may decline to dispense a prescription drug or device
11 on this basis only if the licentiate has previously notified his or
12 her employer, in writing, of the drug or class of drugs to which he
13 or she objects, and the licentiate's employer can, without creating
14 undue hardship, provide a reasonable accommodation of the
15 licentiate's objection. The licentiate's employer shall establish
16 protocols that ensure that the patient has timely access to the
17 prescribed drug or device despite the licentiate's refusal to dispense
18 the prescription or order. For purposes of this section, "reasonable
19 accommodation" and "undue hardship" shall have the same
20 meaning as applied to those terms pursuant to subdivision (l) of
21 Section 12940 of the Government Code.

22 (c) For the purposes of this section, "prescription drug or device"
23 has the same meaning as the definition in Section 4022.

24 (d) The provisions of this section shall apply to the drug therapy
25 described in Section 4052.3.

26 (e) This section imposes no duty on a licentiate to dispense a
27 drug or device pursuant to a prescription or order without payment
28 for the drug or device, including payment directly by the patient
29 or through a third-party payer accepted by the licentiate or payment
30 of any required copayment by the patient.

31 (f) The notice to consumers required by Section 4122 shall
32 include a statement that describes patients' rights relative to the
33 requirements of this section.

34 SEC. 3. Section 800 of the Business and Professions Code is
35 amended to read:

36 800. (a) The Medical Board of California, the Board of
37 Psychology, the Dental Board of California, the Osteopathic
38 Medical Board of California, the State Board of Chiropractic
39 Examiners, the Board of Registered Nursing, the Board of
40 Vocational Nursing and Psychiatric Technicians, the State Board

1 of Optometry, the Veterinary Medical Board, the Board of
2 Behavioral Sciences, the Physical Therapy Board of California,
3 the California State Board of Pharmacy, the Speech-Language
4 Pathology and Audiology Board, the California Board of
5 Occupational Therapy, and the Acupuncture Board shall each
6 separately create and maintain a central file of the names of all
7 persons who hold a license, certificate, or similar authority from
8 that board. Each central file shall be created and maintained to
9 provide an individual historical record for each licensee with
10 respect to the following information:

11 (1) Any conviction of a crime in this or any other state that
12 constitutes unprofessional conduct pursuant to the reporting
13 requirements of Section 803.

14 (2) Any judgment or settlement requiring the licensee or his or
15 her insurer to pay any amount of damages in excess of three
16 thousand dollars (\$3,000) for any claim that injury or death was
17 proximately caused by the licensee's negligence, error or omission
18 in practice, or by rendering unauthorized professional services,
19 pursuant to the reporting requirements of Section 801 or 802.

20 (3) Any public complaints for which provision is made pursuant
21 to subdivision (b).

22 (4) Disciplinary information reported pursuant to Section 805.

23 (b) Each board shall prescribe and promulgate forms on which
24 members of the public and other licensees or certificate holders
25 may file written complaints to the board alleging any act of
26 misconduct in, or connected with, the performance of professional
27 services by the licensee.

28 If a board, or division thereof, a committee, or a panel has failed
29 to act upon a complaint or report within five years, or has found
30 that the complaint or report is without merit, the central file shall
31 be purged of information relating to the complaint or report.

32 Notwithstanding this subdivision, the Board of Psychology, the
33 Board of Behavioral Sciences, and the Respiratory Care Board of
34 California shall maintain complaints or reports as long as each
35 board deems necessary.

36 (c) The contents of any central file that are not public records
37 under any other provision of law shall be confidential except that
38 the licensee involved, or his or her counsel or representative, shall
39 have the right to inspect and have copies made of his or her
40 complete file except for the provision that may disclose the identity

1 of an information source. For the purposes of this section, a board
2 may protect an information source by providing a copy of the
3 material with only those deletions necessary to protect the identity
4 of the source or by providing a comprehensive summary of the
5 substance of the material. Whichever method is used, the board
6 shall ensure that full disclosure is made to the subject of any
7 personal information that could reasonably in any way reflect or
8 convey anything detrimental, disparaging, or threatening to a
9 licensee's reputation, rights, benefits, privileges, or qualifications,
10 or be used by a board to make a determination that would affect
11 a licensee's rights, benefits, privileges, or qualifications. The
12 information required to be disclosed pursuant to Section 803.1
13 shall not be considered among the contents of a central file for the
14 purposes of this subdivision.

15 The licensee may, but is not required to, submit any additional
16 exculpatory or explanatory statement or other information that the
17 board shall include in the central file.

18 Each board may permit any law enforcement or regulatory
19 agency when required for an investigation of unlawful activity or
20 for licensing, certification, or regulatory purposes to inspect and
21 have copies made of that licensee's file, unless the disclosure is
22 otherwise prohibited by law.

23 These disclosures shall effect no change in the confidential status
24 of these records.

25 SEC. 4. Section 2089.5 of the Business and Professions Code
26 is amended to read:

27 2089.5. (a) Clinical instruction in the subjects listed in
28 subdivision (b) of Section 2089 shall meet the requirements of this
29 section and shall be considered adequate if the requirements of
30 subdivision (a) of Section 2089 and the requirements of this section
31 are satisfied.

32 (b) Instruction in the clinical courses shall total a minimum of
33 72 weeks in length.

34 (c) Instruction in the core clinical courses of surgery, medicine,
35 family medicine, pediatrics, obstetrics and gynecology, and
36 psychiatry shall total a minimum of 40 weeks in length with a
37 minimum of eight weeks instruction in surgery, eight weeks in
38 medicine, six weeks in pediatrics, six weeks in obstetrics and
39 gynecology, a minimum of four weeks in family medicine, and
40 four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has a residency program, approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC), in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

(e) If the institution, specified in subdivision (d), is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada, it shall meet the following:

(1) The formal affiliation shall be documented by a written contract detailing the relationship between the medical school, or a school of osteopathic medicine, and hospital and the responsibilities of each.

(2) The school and hospital shall provide to the board a description of the clinical program. The description shall be in sufficient detail to enable the board to determine whether or not the program provides students an adequate medical education. The board shall approve the program if it determines that the program provides an adequate medical education. If the board does not approve the program, it shall provide its reasons for disapproval to the school and hospital in writing specifying its findings about each aspect of the program that it considers to be deficient and the changes required to obtain approval.

(3) The hospital, if located in the United States, shall be accredited by the Joint Commission on Accreditation of Hospitals, and if located in another country, shall be accredited in accordance with the law of that country.

(4) The clinical instruction shall be supervised by a full-time director of medical education, and the head of the department for each core clinical course shall hold a full-time faculty appointment of the medical school or school of osteopathic medicine and shall be board certified or eligible, or have an equivalent credential in that specialty area appropriate to the country in which the hospital is located.

(5) The clinical instruction shall be conducted pursuant to a written program of instruction provided by the school.

(6) The school shall supervise the implementation of the program on a regular basis, documenting the level and extent of its supervision.

(7) The hospital-based faculty shall evaluate each student on a regular basis and shall document the completion of each aspect of the program for each student.

(8) The hospital shall ensure a minimum daily census adequate to meet the instructional needs of the number of students enrolled in each course area of clinical instruction, but not less than 15 patients in each course area of clinical instruction.

(9) The board, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the board has not previously approved the program, and may require the applicant to submit documentation to demonstrate that the applicant's clinical training met the requirements of this subdivision.

(10) The medical school or school of osteopathic medicine shall bear the reasonable cost of any site inspection by the board or its agents necessary to determine whether the clinical program offered is in compliance with this subdivision.

SEC. 5. Section 2096 of the Business and Professions Code is amended to read:

2096. In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least one year of postgraduate training, which includes at least four months of general medicine, in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education

1 (ACGME) or Royal College of Physicians and Surgeons of Canada
2 (RCPSC).

3 The amendments made to this section at the 1987 portion of the
4 1987–88 session of the Legislature shall not apply to applicants
5 who completed their one year of postgraduate training on or before
6 July 1, 1990.

7 SEC. 6. Section 2102 of the Business and Professions Code is
8 amended to read:

9 2102. Any applicant whose professional instruction was
10 acquired in a country other than the United States or Canada shall
11 provide evidence satisfactory to the board of compliance with the
12 following requirements to be issued a physician's and surgeon's
13 certificate:

14 (a) Completion in a medical school or schools of a resident
15 course of professional instruction equivalent to that required by
16 Section 2089 and issuance to the applicant of a document
17 acceptable to the board that shows final and successful completion
18 of the course. However, nothing in this section shall be construed
19 to require the board to evaluate for equivalency any coursework
20 obtained at a medical school disapproved by the board pursuant
21 to this section.

22 (b) Certification by the Educational Commission for Foreign
23 Medical Graduates, or its equivalent, as determined by the board.
24 This subdivision shall apply to all applicants who are subject to
25 this section and who have not taken and passed the written
26 examination specified in subdivision (d) prior to June 1, 1986.

27 (c) Satisfactory completion of the postgraduate training required
28 under Section 2096. An applicant shall be required to have
29 substantially completed the professional instruction required in
30 subdivision (a) and shall be required to make application to the
31 board and have passed steps 1 and 2 of the written examination
32 relating to biomedical and clinical sciences prior to commencing
33 any postgraduate training in this state. In its discretion, the board
34 may authorize an applicant who is deficient in any education or
35 clinical instruction required by Sections 2089 and 2089.5 to make
36 up any deficiencies as a part of his or her postgraduate training
37 program, but that remedial training shall be in addition to the
38 postgraduate training required for licensure.

39 (d) Pass the written examination as provided under Article 9
40 (commencing with Section 2170). An applicant shall be required

1 to meet the requirements specified in subdivision (b) prior to being
2 admitted to the written examination required by this subdivision.

3 Nothing in this section prohibits the board from disapproving
4 any foreign medical school or from denying an application if, in
5 the opinion of the board, the professional instruction provided by
6 the medical school or the instruction received by the applicant is
7 not equivalent to that required in Article 4 (commencing with
8 Section 2080).

9 SEC. 7. Section 2107 of the Business and Professions Code is
10 amended to read:

11 2107. (a) The Legislature intends that the board shall have the
12 authority to substitute postgraduate education and training to
13 remedy deficiencies in an applicant's medical school education
14 and training. The Legislature further intends that applicants who
15 substantially completed their clinical training shall be granted that
16 substitute credit if their postgraduate education took place in an
17 accredited program.

18 (b) To meet the requirements for licensure set forth in Sections
19 2089 and 2089.5, the board may require an applicant under this
20 article to successfully complete additional education and training.
21 In determining the content and duration of the required additional
22 education and training, the board shall consider the applicant's
23 medical education and performance on standardized national
24 examinations, and may substitute approved postgraduate training
25 in lieu of specified undergraduate requirements. Postgraduate
26 training substituted for undergraduate training shall be in addition
27 to the postgraduate training required by Sections 2102 and 2103.

28 SEC. 8. Section 2135 of the Business and Professions Code is
29 amended to read:

30 2135. The board shall issue a physician and surgeon's
31 certificate to an applicant who meets all of the following
32 requirements:

33 (a) The applicant holds an unlimited license as a physician and
34 surgeon in another state or states, or in a Canadian province or
35 Canadian provinces, which was issued upon:

36 (1) Successful completion of a resident course of professional
37 instruction leading to a degree of medical doctor equivalent to that
38 specified in Section 2089. However, nothing in this section shall
39 be construed to require the board to evaluate for equivalency any

1 coursework obtained at a medical school disapproved by the board
2 pursuant to Article 4 (commencing with Section 2080).

3 (2) Taking and passing a written examination that is recognized
4 by the division to be equivalent in content to that administered in
5 California.

6 (b) The applicant has held an unrestricted license to practice
7 medicine, in a state or states, in a Canadian province or Canadian
8 provinces, or as a member of the active military, United States
9 Public Health Services, or other federal program, for a period of
10 at least four years. Any time spent by the applicant in an approved
11 postgraduate training program or clinical fellowship acceptable to
12 the board shall not be included in the calculation of this four-year
13 period.

14 (c) The board determines that no disciplinary action has been
15 taken against the applicant by any medical licensing authority and
16 that the applicant has not been the subject of adverse judgments
17 or settlements resulting from the practice of medicine that the
18 division determines constitutes evidence of a pattern of negligence
19 or incompetence.

20 (d) The applicant (1) has satisfactorily completed at least one
21 year of approved postgraduate training and is certified by a
22 specialty board approved by the American Board of Medical
23 Specialties or approved by the division pursuant to subdivision (h)
24 of Section 651; (2) has satisfactorily completed at least two years
25 of approved postgraduate training; or (3) has satisfactorily
26 completed at least one year of approved postgraduate training and
27 takes and passes the clinical competency written examination.

28 (e) The applicant has not committed any acts or crimes
29 constituting grounds for denial of a certificate under Division 1.5
30 (commencing with Section 475) or Article 12 (commencing with
31 Section 2220).

32 (f) Any application received from an applicant who has held an
33 unrestricted license to practice medicine, in a state or states, or
34 Canadian province or Canadian provinces, or as a member of the
35 active military, United States Public Health Services, or other
36 federal program for four or more years shall be reviewed and
37 processed pursuant to this section. Any time spent by the applicant
38 in an approved postgraduate training program or clinical fellowship
39 acceptable to the board shall not be included in the calculation of
40 this four-year period. This subdivision does not apply to

1 applications that may be reviewed and processed pursuant to
2 Section 2151.

3 SEC. 9. Section 2172 of the Business and Professions Code is
4 repealed.

5 SEC. 10. Section 2173 of the Business and Professions Code
6 is repealed.

7 SEC. 11. Section 2174 of the Business and Professions Code
8 is repealed.

9 SEC. 12. Section 2175 of the Business and Professions Code
10 is amended to read:

11 2175. State examination records shall be kept on file by the
12 board until June 1, 2069. Examinees shall be known and designated
13 by number only, and the name attached to the number shall be kept
14 secret until the examinee is sent notification of the results of the
15 examinations.

16 SEC. 13. Section 2307 of the Business and Professions Code
17 is amended to read:

18 2307. (a) A person whose certificate has been surrendered
19 while under investigation or while charges are pending or whose
20 certificate has been revoked or suspended or placed on probation,
21 may petition the board for reinstatement or modification of penalty,
22 including modification or termination of probation.

23 (b) The person may file the petition after a period of not less
24 than the following minimum periods have elapsed from the
25 effective date of the surrender of the certificate or the decision
26 ordering that disciplinary action:

27 (1) At least three years for reinstatement of a license surrendered
28 or revoked for unprofessional conduct, except that the board may,
29 for good cause shown, specify in a revocation order that a petition
30 for reinstatement may be filed after two years.

31 (2) At least two years for early termination of probation of three
32 years or more.

33 (3) At least one year for modification of a condition, or
34 reinstatement of a license surrendered or revoked for mental or
35 physical illness, or termination of probation of less than three years.

36 (c) The petition shall state any facts as may be required by the
37 board. The petition shall be accompanied by at least two verified
38 recommendations from physicians and surgeons licensed in any
39 state who have personal knowledge of the activities of the petitioner
40 since the disciplinary penalty was imposed.

1 (d) The petition may be heard by a panel of the board. The board
2 may assign the petition to an administrative law judge designated
3 in Section 11371 of the Government Code. After a hearing on the
4 petition, the administrative law judge shall provide a proposed
5 decision to the board or the California Board of Podiatric Medicine,
6 as applicable, which shall be acted upon in accordance with Section
7 2335.

8 (e) The panel of the board or the administrative law judge
9 hearing the petition may consider all activities of the petitioner
10 since the disciplinary action was taken, the offense for which the
11 petitioner was disciplined, the petitioner's activities during the
12 time the certificate was in good standing, and the petitioner's
13 rehabilitative efforts, general reputation for truth, and professional
14 ability. The hearing may be continued from time to time as the
15 administrative law judge designated in Section 11371 of the
16 Government Code finds necessary.

17 (f) The administrative law judge designated in Section 11371
18 of the Government Code reinstating a certificate or modifying a
19 penalty may recommend the imposition of any terms and conditions
20 deemed necessary.

21 (g) No petition shall be considered while the petitioner is under
22 sentence for any criminal offense, including any period during
23 which the petitioner is on court-imposed probation or parole. No
24 petition shall be considered while there is an accusation or petition
25 to revoke probation pending against the person. The board may
26 deny without a hearing or argument any petition filed pursuant to
27 this section within a period of two years from the effective date
28 of the prior decision following a hearing under this section.

29 (h) This section is applicable to and may be carried out with
30 regard to licensees of the California Board of Podiatric Medicine.
31 In lieu of two verified recommendations from physicians and
32 surgeons, the petition shall be accompanied by at least two verified
33 recommendations from podiatrists licensed in any state who have
34 personal knowledge of the activities of the petitioner since the date
35 the disciplinary penalty was imposed.

36 (i) Nothing in this section shall be deemed to alter Sections 822
37 and 823.

38 SEC. 14. Section 2335 of the Business and Professions Code
39 is amended to read:

1 2335. (a) All proposed decisions and interim orders of the
2 Medical Quality Hearing Panel designated in Section 11371 of the
3 Government Code shall be transmitted to the executive director
4 of the board, or the executive director of the California Board of
5 Podiatric Medicine as to the licensees of that board, within 48
6 hours of filing.

7 (b) All interim orders shall be final when filed.

8 (c) A proposed decision shall be acted upon by the board or by
9 any panel appointed pursuant to Section 2008 or by the California
10 Board of Podiatric Medicine, as the case may be, in accordance
11 with Section 11517 of the Government Code, except that all of the
12 following shall apply to proceedings against licensees under this
13 chapter:

14 (1) When considering a proposed decision, the board or panel
15 and the California Board of Podiatric Medicine shall give great
16 weight to the findings of fact of the administrative law judge,
17 except to the extent those findings of fact are controverted by new
18 evidence.

19 (2) The board's staff or the staff of the California Board of
20 Podiatric Medicine shall poll the members of the board or panel
21 or of the California Board of Podiatric Medicine by written mail
22 ballot concerning the proposed decision. The mail ballot shall be
23 sent within 10 calendar days of receipt of the proposed decision,
24 and shall poll each member on whether the member votes to
25 approve the decision, to approve the decision with an altered
26 penalty, to refer the case back to the administrative law judge for
27 the taking of additional evidence, to defer final decision pending
28 discussion of the case by the panel or board as a whole, or to
29 nonadopt the decision. No party to the proceeding, including
30 employees of the agency that filed the accusation, and no person
31 who has a direct or indirect interest in the outcome of the
32 proceeding or who presided at a previous stage of the decision,
33 may communicate directly or indirectly, upon the merits of a
34 contested matter while the proceeding is pending, with any member
35 of the panel or board, without notice and opportunity for all parties
36 to participate in the communication. The votes of a majority of the
37 board or of the panel, and a majority of the California Board of
38 Podiatric Medicine, are required to approve the decision with an
39 altered penalty, to refer the case back to the administrative law
40 judge for the taking of further evidence, or to nonadopt the

1 decision. The votes of two members of the panel or board are
2 required to defer final decision pending discussion of the case by
3 the panel or board as a whole. If there is a vote by the specified
4 number to defer final decision pending discussion of the case by
5 the panel or board as a whole, provision shall be made for that
6 discussion before the 100-day period specified in paragraph (3)
7 expires, but in no event shall that 100-day period be extended.

8 (3) If a majority of the board or of the panel, or a majority of
9 the California Board of Podiatric Medicine vote to do so, the board
10 or the panel or the California Board of Podiatric Medicine shall
11 issue an order of nonadoption of a proposed decision within 100
12 calendar days of the date it is received by the board. If the board
13 or the panel or the California Board of Podiatric Medicine does
14 not refer the case back to the administrative law judge for the
15 taking of additional evidence or issue an order of nonadoption
16 within 100 days, the decision shall be final and subject to review
17 under Section 2337. Members of the board or of any panel or of
18 the California Board of Podiatric Medicine who review a proposed
19 decision or other matter and vote by mail as provided in paragraph
20 (2) shall return their votes by mail to the board within 30 days
21 from receipt of the proposed decision or other matter.

22 (4) The board or the panel or the California Board of Podiatric
23 Medicine shall afford the parties the opportunity to present oral
24 argument before deciding a case after nonadoption of the
25 administrative law judge's decision.

26 (5) A vote of a majority of the board or of a panel, or a majority
27 of the California Board of Podiatric Medicine, are required to
28 increase the penalty from that contained in the proposed
29 administrative law judge's decision. No member of the board or
30 panel or of the California Board of Podiatric Medicine may vote
31 to increase the penalty except after reading the entire record and
32 personally hearing any additional oral argument and evidence
33 presented to the panel or board.

34 SEC. 15. Section 2486 of the Business and Professions Code
35 is amended to read:

36 2486. The Medical board of California shall issue, upon the
37 recommendation of the board, a certificate to practice podiatric
38 medicine if the applicant has submitted directly to the board from
39 the credentialing organizations verification that he or she meets
40 all of the following requirements:

1 (a) The applicant has graduated from an approved school or
2 college of podiatric medicine and meets the requirements of Section
3 2483.

4 (b) The applicant, within the past 10 years, has passed parts I,
5 II, and III of the examination administered by the National Board
6 of Podiatric Medical Examiners of the United States or has passed
7 a written examination that is recognized by the board to be the
8 equivalent in content to the examination administered by the
9 National Board of Podiatric Medical Examiners of the United
10 States.

11 (c) The applicant has satisfactorily completed the postgraduate
12 training required by Section 2484.

13 (d) The applicant has passed within the past 10 years any oral
14 and practical examination that may be required of all applicants
15 by the board to ascertain clinical competence.

16 (e) The applicant has committed no acts or crimes constituting
17 grounds for denial of a certificate under Division 1.5 (commencing
18 with Section 475).

19 (f) The board determines that no disciplinary action has been
20 taken against the applicant by any podiatric licensing authority
21 and that the applicant has not been the subject of adverse judgments
22 or settlements resulting from the practice of podiatric medicine
23 that the board determines constitutes evidence of a pattern of
24 negligence or incompetence.

25 (g) A disciplinary databank report regarding the applicant is
26 received by the board from the Federation of Podiatric Medical
27 Boards.

28 SEC. 16. Section 2488 of the Business and Professions Code
29 is amended to read:

30 2488. Notwithstanding any other provision of law, the board
31 shall issue, upon the recommendation of the board, a certificate to
32 practice podiatric medicine by credentialing if the applicant has
33 submitted directly to the board from the credentialing organizations
34 verification that he or she is licensed as a doctor of podiatric
35 medicine in any other state and meets all of the following
36 requirements:

37 (a) The applicant has graduated from an approved school or
38 college of podiatric medicine.

39 (b) The applicant, within the past 10 years, has passed either
40 part III of the examination administered by the National Board of

1 Podiatric Medical Examiners of the United States or a written
2 examination that is recognized by the board to be the equivalent
3 in content to the examination administered by the National Board
4 of Podiatric Medical Examiners of the United States.

5 (c) The applicant has satisfactorily completed a postgraduate
6 training program approved by the Council on Podiatric Medical
7 Education.

8 (d) The applicant, within the past 10 years, has passed any oral
9 and practical examination that may be required of all applicants
10 by the board to ascertain clinical competence.

11 (e) The applicant has committed no acts or crimes constituting
12 grounds for denial of a certificate under Division 1.5 (commencing
13 with Section 475).

14 (f) The board determines that no disciplinary action has been
15 taken against the applicant by any podiatric licensing authority
16 and that the applicant has not been the subject of adverse judgments
17 or settlements resulting from the practice of podiatric medicine
18 that the board determines constitutes evidence of a pattern of
19 negligence or incompetence.

20 (g) A disciplinary data bank report regarding the applicant from
21 the Federation of Podiatric Medical Boards.

22 SEC. 17. Section 2570.5 of the Business and Professions Code
23 is amended to read:

24 2570.5. (a) A limited permit may be granted to any person
25 who has completed the education and experience requirements of
26 this chapter.

27 (b) A person who meets the qualifications to be admitted to the
28 examination for licensure or certification under this chapter and
29 is waiting to take the examination or awaiting the announcement
30 of the results of the examination, according to the application
31 requirements for a limited permit, may practice as an occupational
32 therapist or as an occupational therapy assistant under the direction
33 and appropriate supervision of an occupational therapist duly
34 licensed under this chapter. If that person fails to pass the
35 examination during the initial eligibility period, all privileges under
36 this section shall automatically cease upon due notice to the
37 applicant of that failure and may not be renewed.

38 (c) A limited permit shall be subject to other requirements set
39 forth in rules adopted by the board.

1 SEC. 18. Section 2570.185 of the Business and Professions
2 Code is amended and renumbered to read:

3 2570.18.5. (a) An occupational therapist shall document his
4 or her evaluation, goals, treatment plan, and summary of treatment
5 in the patient record.

6 (b) An occupational therapy assistant shall document the services
7 provided in the patient record.

8 (c) Occupational therapists and occupational therapy assistants
9 shall document and sign the patient record legibly.

10 (d) Patient records shall be maintained for a period of no less
11 than seven years following the discharge of the patient, except that
12 the records of unemancipated minors shall be maintained at least
13 one year after the minor has reached the age of 18 years, and not
14 in any case less than seven years.

15 ~~SEC. 19. Section 2570.35 is added to the Business and~~
16 ~~Professions Code, to read:~~

17 ~~2570.35. (a) An employer of an occupational therapy~~
18 ~~practitioner shall report to the board the suspension or termination~~
19 ~~for cause of any practitioner in its employ. Reporting pursuant to~~
20 ~~this section shall not act as a waiver of confidentiality of medical~~
21 ~~records and the information reported or disclosed pursuant to this~~
22 ~~section shall be kept confidential, except as provided in subdivision~~
23 ~~(e) of Section 800, and shall not be subject to discovery in a civil~~
24 ~~case.~~

25 ~~(b) For purposes of this section, “suspension or termination for~~
26 ~~cause” means suspension or termination from employment for any~~
27 ~~of the following reasons:~~

28 ~~(1) Use of controlled substances or alcohol to such an extent~~
29 ~~that it impaired the ability of the employee to safely practice~~
30 ~~occupational therapy.~~

31 ~~(2) Unlawful sale of controlled substances or other prescription~~
32 ~~items.~~

33 ~~(3) Patient neglect, physical harm to a patient, or sexual contact~~
34 ~~with a patient.~~

35 ~~(4) Falsification of medical records.~~

36 ~~(5) Gross incompetence or negligence.~~

37 ~~(6) Theft from patients, other employees, or the employer.~~

38 ~~(c) Failure of an employer to make a report required by this~~
39 ~~section is punishable by an administrative fine not to exceed five~~
40 ~~thousand dollars (\$5,000) per violation.~~

1 ~~SEC. 20.~~

2 *SEC. 19.* Section 2570.36 is added to the Business and
3 Professions Code, to read:

4 2570.36. If a licensee has knowledge that an applicant or
5 licensee may be in violation of, or has violated, any of the statutes
6 or regulations administered by the board, the licensee shall report
7 this information to the board in writing and shall cooperate with
8 the board in providing information or assistance as may be
9 required.

10 ~~SEC. 21.~~

11 *SEC. 20.* Section 2760.1 of the Business and Professions Code
12 is amended to read:

13 2760.1. (a) A registered nurse whose license has been revoked
14 or suspended or who has been placed on probation may petition
15 the board for reinstatement or modification of penalty, including
16 reduction or termination of probation, after a period not less than
17 the following minimum periods has elapsed from the effective
18 date of the decision ordering that disciplinary action, or if the order
19 of the board or any portion of it is stayed by the board itself or by
20 the superior court, from the date the disciplinary action is actually
21 implemented in its entirety, or for a registered nurse whose initial
22 license application is subject to a disciplinary decision, from the
23 date the initial license was issued:

24 (1) Except as otherwise provided in this section, at least three
25 years for reinstatement of a license that was revoked, except that
26 the board may, in its sole discretion, specify in its order a lesser
27 period of time provided that the period shall be not less than one
28 year.

29 (2) At least two years for early termination of a probation period
30 of three years or more.

31 (3) At least one year for modification of a condition, or
32 reinstatement of a license revoked for mental or physical illness,
33 or termination of probation of less than three years.

34 (b) The board shall give notice to the Attorney General of the
35 filing of the petition. The petitioner and the Attorney General shall
36 be given timely notice by letter of the time and place of the hearing
37 on the petition, and an opportunity to present both oral and
38 documentary evidence and argument to the board. The petitioner
39 shall at all times have the burden of proof to establish by clear and

1 convincing evidence that he or she is entitled to the relief sought
2 in the petition.

3 (c) The hearing may be continued from time to time as the board
4 deems appropriate.

5 (d) The board itself shall hear the petition and the administrative
6 law judge shall prepare a written decision setting forth the reasons
7 supporting the decision.

8 (e) The board may grant or deny the petition, or may impose
9 any terms and conditions that it reasonably deems appropriate as
10 a condition of reinstatement or reduction of penalty.

11 (f) The petitioner shall provide a current set of fingerprints
12 accompanied by the necessary fingerprinting fee.

13 (g) No petition shall be considered while the petitioner is under
14 sentence for any criminal offense, including any period during
15 which the petitioner is on court-imposed probation or parole, or
16 subject to an order of registration pursuant to Section 290 of the
17 Penal Code. No petition shall be considered while there is an
18 accusation or petition to revoke probation pending against the
19 petitioner.

20 (h) Except in those cases where the petitioner has been
21 disciplined pursuant to Section 822, the board may in its discretion
22 deny without hearing or argument any petition that is filed pursuant
23 to this section within a period of two years from the effective date
24 of a prior decision following a hearing under this section.

25 ~~SEC. 22.~~

26 *SEC. 21.* Section 3625 of the Business and Professions Code
27 is amended to read:

28 3625. (a) The Director of Consumer Affairs shall establish an
29 advisory council consisting of nine members. Members of the
30 advisory council shall include three members who are California
31 licensed naturopathic doctors, or have met the requirements for
32 licensure pursuant to this chapter, three members who are
33 California licensed physicians and surgeons, and three public
34 members.

35 (b) A member of the advisory council shall be appointed for a
36 four-year term. A person shall not serve as a member of the council
37 for more than two consecutive terms. A member shall hold office
38 until the appointment and qualification of his or her successor, or
39 until one year from the expiration of the term for which the member
40 was appointed, whichever first occurs. Vacancies shall be filled

1 by appointment for unexpired terms. The first terms of the members
2 first appointed shall be as follows:

3 (1) The Governor shall appoint one physician and surgeon
4 member, one naturopathic doctor member, and one public member,
5 with term expirations of June 1, 2006; one physician and surgeon
6 member with a term expiration date of June 1, 2007; and one
7 naturopathic doctor member with a term expiration date of June
8 1, 2008.

9 (2) The Senate Committee on Rules shall appoint one physician
10 and surgeon member with a term expiration of June 1, 2008, and
11 one public member with a term expiration of June 1, 2007.

12 (3) The Speaker of the Assembly shall appoint one naturopathic
13 doctor member with a term expiration of June 1, 2007, and one
14 public member with a term expiration of June 1, 2008.

15 (c) (1) A public member of the advisory council shall be a
16 citizen of this state for at least five years preceding his or her
17 appointment.

18 (2) A person shall not be appointed as a public member if the
19 person or the person's immediate family in any manner owns an
20 interest in a college, school, or institution engaged in naturopathic
21 education, or the person or the person's immediate family has an
22 economic interest in naturopathy or has any other conflict of
23 interest. "Immediate family" means the public member's spouse,
24 parents, children, or his or her children's spouses.

25 (d) In order to operate in as cost-effective a manner as possible,
26 the advisory council and any advisory committee created pursuant
27 to this chapter shall meet as few times as necessary to perform its
28 duties.

29 ~~SEC. 23.~~

30 *SEC. 22.* Section 3633.1 of the Business and Professions Code
31 is amended to read:

32 3633.1. The bureau may grant a license to an applicant who
33 meets the requirements of Section 3630, but who graduated prior
34 to 1986, pre-NPLEX, and passed a state or Canadian Province
35 naturopathic licensing examination. Applications under this section
36 shall be received no later than December 31, 2010.

37 ~~SEC. 24.~~

38 *SEC. 23.* Section 3635 of the Business and Professions Code
39 is amended to read:

1 3635. (a) In addition to any other qualifications and
2 requirements for licensure renewal, the bureau shall require the
3 satisfactory completion of 60 hours of approved continuing
4 education biennially. This requirement is waived for the initial
5 license renewal. The continuing education shall meet the following
6 requirements:

7 (1) At least 20 hours shall be in pharmacotherapeutics.

8 (2) No more than 15 hours may be in naturopathic medical
9 journals or osteopathic or allopathic medical journals, or audio or
10 videotaped presentations, slides, programmed instruction, or
11 computer-assisted instruction or preceptorships.

12 (3) No more than 20 hours may be in any single topic.

13 (4) No more than 15 hours of the continuing education
14 requirements for the specialty certificate in naturopathic childbirth
15 attendance shall apply to the 60 hours of continuing education
16 requirement.

17 (b) The continuing education requirements of this section may
18 be met through continuing education courses approved by the
19 bureau, the California Naturopathic Doctors Association, the
20 American Association of Naturopathic Physicians, the California
21 State Board of Pharmacy, the State Board of Chiropractic
22 Examiners, or other courses that meet the standards for continuing
23 education for licensed physicians and surgeons in California.

24 ~~SEC. 25.~~

25 *SEC. 24.* Section 3636 of the Business and Professions Code
26 is amended to read:

27 3636. (a) Upon a written request, the bureau may grant inactive
28 status to a naturopathic doctor who is in good standing and who
29 meets the requirements of Section 462.

30 (b) A person whose license is in inactive status may not engage
31 in any activity for which a license is required under this chapter.

32 (c) A person whose license is in inactive status shall be exempt
33 from continuing education requirements while his or her license
34 is in that status.

35 (d) To restore a license to active status, a person whose license
36 is in inactive status must fulfill continuing education requirements
37 for the two-year period prior to reactivation, and be current with
38 all licensing fees as determined by the bureau.

~~SEC. 26.~~

SEC. 25. Section 3685 of the Business and Professions Code is amended to read:

3685. (a) This chapter shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this chapter renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).

(b) The bureau shall prepare the report required by Section 473.2 no later than September 1, 2008.

~~SEC. 27.~~

SEC. 26. Section 3750.5 of the Business and Professions Code is amended to read:

3750.5. In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

(a) Obtained, possessed, used, or administered to himself or herself, in violation of law, or furnished or administered to another, any controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, or any alcoholic beverage, to an extent or in a manner dangerous or injurious to himself or herself, another person, or the public, or to the extent that the use impaired his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivision (a), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

1 (e) Been committed or confined by a court of competent
2 jurisdiction for intemperate use of or addiction to the use of any
3 of the substances described in subdivisions (a), (b), and (c), in
4 which event the court order of commitment or confinement is
5 prima facie evidence of that commitment or confinement.

6 (f) Falsified, or made grossly incorrect, grossly inconsistent, or
7 unintelligible entries in any hospital, patient, or other record
8 pertaining to the substances described in subdivision (a).

9 ~~SEC. 28.~~

10 *SEC. 27.* Section 3753.5 of the Business and Professions Code
11 is amended to read:

12 3753.5. (a) In any order issued in resolution of a disciplinary
13 proceeding before the board, the board or the administrative law
14 judge may direct any practitioner or applicant found to have
15 committed a violation or violations of law, or any term and
16 condition of board probation, to pay to the board a sum not to
17 exceed the costs of the investigation and prosecution of the case.
18 A certified copy of the actual costs, or a good faith estimate of
19 costs where actual costs are not available, signed by the official
20 custodian of the record or his or her designated representative shall
21 be prima facie evidence of the actual costs of the investigation and
22 prosecution of the case.

23 (b) The costs shall be assessed by the administrative law judge
24 and shall not be increased by the board; however, the costs may
25 be imposed or increased by the board if it does not adopt the
26 proposed decision of the case.

27 Where an order for recovery of costs is made and timely payment
28 is not made as directed in the board's decision the board may
29 enforce the order for repayment in any appropriate court. This
30 right of enforcement shall be in addition to any other rights the
31 board may have as to any practitioner directed to pay costs.

32 (c) In any action for recovery of costs, proof of the board's
33 decision shall be conclusive proof of the validity of the order of
34 payment and the terms for payment.

35 (d) (1) The board shall not renew or reinstate the license of any
36 licensee who has failed to pay all of the costs ordered under this
37 section.

38 (2) Notwithstanding paragraph (1), the board may, in its
39 discretion, conditionally renew, for a maximum of one year, the
40 license of any licensee who demonstrates financial hardship,

1 through documentation satisfactory to the board, and who enters
2 into a formal agreement with the board to reimburse the board
3 within that one-year period for those unpaid costs.

4 ~~SEC. 29.~~

5 *SEC. 28.* Section 3773 of the Business and Professions Code
6 is amended to read:

7 3773. (a) At the time of application for renewal of a respiratory
8 care practitioner license, the licensee shall notify the board of all
9 of the following:

10 (1) Whether he or she has been convicted of any crime
11 subsequent to the licensee's previous renewal.

12 (2) The name and address of the licensee's current employer or
13 employers.

14 (b) The licensee shall cooperate in providing additional
15 information as requested by the board. If a licensee fails to provide
16 the requested information within 30 days, the license shall become
17 inactive until the information is received.

18 ~~SEC. 30.~~

19 *SEC. 29.* Section 4022.5 of the Business and Professions Code
20 is amended to read:

21 4022.5. (a) "Designated representative" means an individual
22 to whom a license has been granted pursuant to Section 4053. A
23 pharmacist fulfilling the duties of Section 4053 shall not be
24 required to obtain a license as a designated representative.

25 (b) "Designated representative-in-charge" means a designated
26 representative or a pharmacist proposed by a wholesaler or
27 veterinary food-animal drug retailer and approved by the board as
28 the supervisor or manager responsible for ensuring the wholesaler's
29 or veterinary food-animal drug retailer's compliance with all state
30 and federal laws and regulations pertaining to practice in the
31 applicable license category.

32 (c) This section shall become operative on January 1, 2006.

33 ~~SEC. 31.~~

34 *SEC. 30.* Section 4027 of the Business and Professions Code
35 is amended to read:

36 4027. (a) As used in this chapter, the terms "skilled nursing
37 facility," "intermediate care facility," and other references to health
38 facilities shall be construed with respect to the definitions contained
39 in Article 1 (commencing with Section 1250) of Chapter 2 of
40 Division 2 of the Health and Safety Code.

(b) As used in Section 4052.1, “licensed health care facility” means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) As used in Section 4052.2, “health care facility” means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of the Health and Safety Code, or by an organization under common ownership or control of the health care service plan; “licensed home health agency” means a private or public organization licensed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code, as further defined in Section 1727 of the Health and Safety Code; and “licensed clinic” means a clinic licensed pursuant to Article 1 (commencing with Section 1200) of Chapter 1 of Division 2 of the Health and Safety Code.

(d) “Licensed health care facility” or “facility,” as used in Section 4065, means a health facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or by an organization under common ownership or control with the health care service plan.

~~SEC. 32.~~

SEC. 31. Section 4036.5 is added to the Business and Professions Code, to read:

4036.5. “Pharmacist-in-charge” means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

~~SEC. 33.~~

SEC. 32. Section 4040 of the Business and Professions Code is amended to read:

1 4040. (a) “Prescription” means an oral, written, or electronic
2 transmission order that is both of the following:

3 (1) Given individually for the person or persons for whom
4 ordered that includes all of the following:

5 (A) The name or names and address of the patient or patients.

6 (B) The name and quantity of the drug or device prescribed and
7 the directions for use.

8 (C) The date of issue.

9 (D) Either rubber stamped, typed, or printed by hand or typeset,
10 the name, address, and telephone number of the prescriber, his or
11 her license classification, and his or her federal registry number,
12 if a controlled substance is prescribed.

13 (E) A legible, clear notice of the condition for which the drug
14 is being prescribed, if requested by the patient or patients.

15 (F) If in writing, signed by the prescriber issuing the order, or
16 the certified nurse-midwife, nurse practitioner, physician assistant,
17 or naturopathic doctor who issues a drug order pursuant to Section
18 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist
19 who issues a drug order pursuant to either Section 4052.1 or
20 4052.2.

21 (2) Issued by a physician, dentist, optometrist, podiatrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,
23 if a drug order is issued pursuant to Section 2746.51, 2836.1,
24 3502.1, or 3640.5, by a certified nurse-midwife, nurse practitioner,
25 physician assistant, or naturopathic doctor licensed in this state,
26 or pursuant to either Section 4052.1 or 4052.2 by a pharmacist
27 licensed in this state.

28 (b) Notwithstanding subdivision (a), a written order of the
29 prescriber for a dangerous drug, except for any Schedule II
30 controlled substance, that contains at least the name and signature
31 of the prescriber, the name and address of the patient in a manner
32 consistent with paragraph (2) of subdivision (a) of Section 11164
33 of the Health and Safety Code, the name and quantity of the drug
34 prescribed, directions for use, and the date of issue may be treated
35 as a prescription by the dispensing pharmacist as long as any
36 additional information required by subdivision (a) is readily
37 retrievable in the pharmacy. In the event of a conflict between this
38 subdivision and Section 11164 of the Health and Safety Code,
39 Section 11164 of the Health and Safety Code shall prevail.

(c) “Electronic transmission prescription” includes both image and data prescriptions. “Electronic image transmission prescription” means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. “Electronic data transmission prescription” means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

~~SEC. 34.~~

SEC. 33. Section 4051 of the Business and Professions Code is amended to read:

4051. (a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section 4052.1, 4052.2, or 4052.3, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

(1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.

(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

(3) Access to the information described in paragraph (2) is secure from unauthorized access and use.

~~SEC. 35.~~

SEC. 34. Section 4059.5 of the Business and Professions Code is amended to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed

1 premises and signed for and received by a pharmacist. Where a
2 licensee is permitted to operate through a designated representative,
3 the designated representative shall sign for and receive the delivery.

4 (b) A dangerous drug or dangerous device transferred, sold, or
5 delivered to a person within this state shall be transferred, sold, or
6 delivered only to an entity licensed by the board, to a manufacturer,
7 or to an ultimate user or the ultimate user's agent.

8 (c) Notwithstanding subdivisions (a) and (b), deliveries to a
9 hospital pharmacy may be made to a central receiving location
10 within the hospital. However, the dangerous drugs or dangerous
11 devices shall be delivered to the licensed pharmacy premises within
12 one working day following receipt by the hospital, and the
13 pharmacist on duty at that time shall immediately inventory the
14 dangerous drugs or dangerous devices.

15 (d) Notwithstanding any other provision of law, a dangerous
16 drug or dangerous device may be ordered by and provided to a
17 manufacturer, physician, dentist, podiatrist, optometrist,
18 veterinarian, naturopathic doctor pursuant to Section 3640.7, or
19 laboratory, or a physical therapist acting within the scope of his
20 or her license. A person or entity receiving delivery of a dangerous
21 drug or dangerous device, or a duly authorized representative of
22 the person or entity, shall sign for the receipt of the dangerous drug
23 or dangerous device.

24 (e) A dangerous drug or dangerous device shall not be
25 transferred, sold, or delivered to a person outside this state, whether
26 foreign or domestic, unless the transferor, seller, or deliverer does
27 so in compliance with the laws of this state and of the United States
28 and of the state or country to which the dangerous drugs or
29 dangerous devices are to be transferred, sold, or delivered.
30 Compliance with the laws of this state and the United States and
31 of the state or country to which the dangerous drugs or dangerous
32 devices are to be delivered shall include, but not be limited to,
33 determining that the recipient of the dangerous drugs or dangerous
34 devices is authorized by law to receive the dangerous drugs or
35 dangerous devices.

36 (f) Notwithstanding subdivision (a), a pharmacy may take
37 delivery of dangerous drugs and dangerous devices when the
38 pharmacy is closed and no pharmacist is on duty if all of the
39 following requirements are met:

1 (1) The drugs are placed in a secure storage facility in the same
2 building as the pharmacy.

3 (2) Only the pharmacist-in-charge or a pharmacist designated
4 by the pharmacist-in-charge has access to the secure storage facility
5 after dangerous drugs or dangerous devices have been delivered.

6 (3) The secure storage facility has a means of indicating whether
7 it has been entered after dangerous drugs or dangerous devices
8 have been delivered.

9 (4) The pharmacy maintains written policies and procedures for
10 the delivery of dangerous drugs and dangerous devices to a secure
11 storage facility.

12 (5) The agent delivering dangerous drugs and dangerous devices
13 pursuant to this subdivision leaves documents indicating the name
14 and amount of each dangerous drug or dangerous device delivered
15 in the secure storage facility.

16 The pharmacy shall be responsible for the dangerous drugs and
17 dangerous devices delivered to the secure storage facility. The
18 pharmacy shall also be responsible for obtaining and maintaining
19 records relating to the delivery of dangerous drugs and dangerous
20 devices to a secure storage facility.

21 (g) This section shall become operative on January 1, 2006.

22 ~~SEC. 36.~~

23 *SEC. 35.* Section 4060 of the Business and Professions Code
24 is amended to read:

25 4060. No person shall possess any controlled substance, except
26 that furnished to a person upon the prescription of a physician,
27 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
28 pursuant to Section 3640.7, or furnished pursuant to a drug order
29 issued by a certified nurse-midwife pursuant to Section 2746.51,
30 a nurse practitioner pursuant to Section 2836.1, a physician
31 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant
32 to Section 3640.5, or a pharmacist pursuant to either Section 4052.1
33 or 4052.2. This section shall not apply to the possession of any
34 controlled substance by a manufacturer, wholesaler, pharmacy,
35 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
36 naturopathic doctor, certified nurse-midwife, nurse practitioner,
37 or physician assistant, when in stock in containers correctly labeled
38 with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a
2 nurse practitioner, a physician assistant, or a naturopathic doctor,
3 to order his or her own stock of dangerous drugs and devices.

4 ~~SEC. 37.~~

5 *SEC. 36.* Section 4062 of the Business and Professions Code
6 is amended to read:

7 4062. (a) Notwithstanding Section 4059 or any other provision
8 of law, a pharmacist may, in good faith, furnish a dangerous drug
9 or dangerous device in reasonable quantities without a prescription
10 during a federal, state, or local emergency, to further the health
11 and safety of the public. A record containing the date, name, and
12 address of the person to whom the drug or device is furnished, and
13 the name, strength, and quantity of the drug or device furnished
14 shall be maintained. The pharmacist shall communicate this
15 information to the patient's attending physician as soon as possible.
16 Notwithstanding Section 4060 or any other provision of law, a
17 person may possess a dangerous drug or dangerous device
18 furnished without prescription pursuant to this section.

19 (b) During a declared federal, state, or local emergency, the
20 board may waive application of any provisions of this chapter or
21 the regulations adopted pursuant to it if, in the board's opinion,
22 the waiver will aid in the protection of public health or the
23 provision of patient care.

24 (c) During a declared federal, state, or local emergency, the
25 board shall allow for the employment of a mobile pharmacy in
26 impacted areas in order to ensure the continuity of patient care, if
27 all of the following conditions are met:

28 (1) The mobile pharmacy shares common ownership with at
29 least one currently licensed pharmacy in good standing.

30 (2) The mobile pharmacy retains records of dispensing, as
31 required by subdivision (a).

32 (3) A licensed pharmacist is on the premises and the mobile
33 pharmacy is under the control and management of a pharmacist
34 while the drugs are being dispensed.

35 (4) Reasonable security measures are taken to safeguard the
36 drug supply maintained in the mobile pharmacy.

37 (5) The mobile pharmacy is located within the declared
38 emergency area or affected areas.

39 (6) The mobile pharmacy ceases the provision of services within
40 48 hours following the termination of the declared emergency.

1 ~~SEC. 38.~~

2 *SEC. 37.* Section 4076 of the Business and Professions Code
3 is amended to read:

4 4076. (a) A pharmacist shall not dispense any prescription
5 except in a container that meets the requirements of state and
6 federal law and is correctly labeled with all of the following:

7 (1) Except where the prescriber or the certified nurse-midwife
8 who functions pursuant to a standardized procedure or protocol
9 described in Section 2746.51, the nurse practitioner who functions
10 pursuant to a standardized procedure described in Section 2836.1,
11 or protocol, the physician assistant who functions pursuant to
12 Section 3502.1, the naturopathic doctor who functions pursuant
13 to a standardized procedure or protocol described in Section
14 3640.5, or the pharmacist who functions pursuant to a policy,
15 procedure, or protocol pursuant to either Section 4052.1 or 4052.2
16 orders otherwise, either the manufacturer's trade name of the drug
17 or the generic name and the name of the manufacturer. Commonly
18 used abbreviations may be used. Preparations containing two or
19 more active ingredients may be identified by the manufacturer's
20 trade name or the commonly used name or the principal active
21 ingredients.

22 (2) The directions for the use of the drug.

23 (3) The name of the patient or patients.

24 (4) The name of the prescriber or, if applicable, the name of the
25 certified nurse-midwife who functions pursuant to a standardized
26 procedure or protocol described in Section 2746.51, the nurse
27 practitioner who functions pursuant to a standardized procedure
28 described in Section 2836.1, or protocol, the physician assistant
29 who functions pursuant to Section 3502.1, the naturopathic doctor
30 who functions pursuant to a standardized procedure or protocol
31 described in Section 3640.5, or the pharmacist who functions
32 pursuant to a policy, procedure, or protocol pursuant to either
33 Section 4052.1 or 4052.2.

34 (5) The date of issue.

35 (6) The name and address of the pharmacy, and prescription
36 number or other means of identifying the prescription.

37 (7) The strength of the drug or drugs dispensed.

38 (8) The quantity of the drug or drugs dispensed.

39 (9) The expiration date of the effectiveness of the drug
40 dispensed.

1 (10) The condition for which the drug was prescribed if
2 requested by the patient and the condition is indicated on the
3 prescription.

4 (11) (A) Commencing January 1, 2006, the physical description
5 of the dispensed medication, including its color, shape, and any
6 identification code that appears on the tablets or capsules, except
7 as follows:

8 (i) Prescriptions dispensed by a veterinarian.

9 (ii) An exemption from the requirements of this paragraph shall
10 be granted to a new drug for the first 120 days that the drug is on
11 the market and for the 90 days during which the national reference
12 file has no description on file.

13 (iii) Dispensed medications for which no physical description
14 exists in any commercially available database.

15 (B) This paragraph applies to outpatient pharmacies only.

16 (C) The information required by this paragraph may be printed
17 on an auxiliary label that is affixed to the prescription container.

18 (D) This paragraph shall not become operative if the board,
19 prior to January 1, 2006, adopts regulations that mandate the same
20 labeling requirements set forth in this paragraph.

21 (b) If a pharmacist dispenses a prescribed drug by means of a
22 unit dose medication system, as defined by administrative
23 regulation, for a patient in a skilled nursing, intermediate care, or
24 other health care facility, the requirements of this section will be
25 satisfied if the unit dose medication system contains the
26 aforementioned information or the information is otherwise readily
27 available at the time of drug administration.

28 (c) If a pharmacist dispenses a dangerous drug or device in a
29 facility licensed pursuant to Section 1250 of the Health and Safety
30 Code, it is not necessary to include on individual unit dose
31 containers for a specific patient, the name of the certified
32 nurse-midwife who functions pursuant to a standardized procedure
33 or protocol described in Section 2746.51, the nurse practitioner
34 who functions pursuant to a standardized procedure described in
35 Section 2836.1, or protocol, the physician assistant who functions
36 pursuant to Section 3502.1, the naturopathic doctor who functions
37 pursuant to a standardized procedure or protocol described in
38 Section 3640.5, or the pharmacist who functions pursuant to a
39 policy, procedure, or protocol pursuant to either Section 4052.1
40 or 4052.2.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

~~SEC. 39.~~

SEC. 38. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

1 ~~SEC. 40.~~

2 *SEC. 39.* Section 4110 of the Business and Professions Code
3 is amended to read:

4 4110. (a) No person shall conduct a pharmacy in the State of
5 California unless he or she has obtained a license from the board.
6 A license shall be required for each pharmacy owned or operated
7 by a specific person. A separate license shall be required for each
8 of the premises of any person operating a pharmacy in more than
9 one location. The license shall be renewed annually. The board
10 may, by regulation, determine the circumstances under which a
11 license may be transferred.

12 (b) The board may, at its discretion, issue a temporary permit,
13 when the ownership of a pharmacy is transferred from one person
14 to another, upon the conditions and for any periods of time as the
15 board determines to be in the public interest. A temporary permit
16 fee shall be established by the board at an amount not to exceed
17 the annual fee for renewal of a permit to conduct a pharmacy.
18 When needed to protect public safety, a temporary permit may be
19 issued for a period not to exceed 180 days, and may be issued
20 subject to terms and conditions the board deems necessary. If the
21 board determines a temporary permit was issued by mistake or
22 denies the application for a permanent license or registration, the
23 temporary license or registration shall terminate upon either
24 personal service of the notice of termination upon the permitholder
25 or service by certified mail, return receipt requested, at the
26 permitholder's address of record with the board, whichever comes
27 first. Neither for purposes of retaining a temporary permit nor for
28 purposes of any disciplinary or license denial proceeding before
29 the board shall the temporary permitholder be deemed to have a
30 vested property right or interest in the permit.

31 (c) The board may allow the temporary use of a mobile
32 pharmacy when a pharmacy is destroyed or damaged, the mobile
33 pharmacy is necessary to protect the health and safety of the public,
34 and the following conditions are met:

35 (1) The mobile pharmacy shall provide services only on or
36 immediately contiguous to the site of the damaged or destroyed
37 pharmacy.

38 (2) The mobile pharmacy is under the control and management
39 of the pharmacist-in-charge of the pharmacy that was destroyed
40 or damaged.

1 (3) A licensed pharmacist is on the premises while drugs are
2 being dispensed.

3 (4) Reasonable security measures are taken to safeguard the
4 drug supply maintained in the mobile pharmacy.

5 (5) The pharmacy operating the mobile pharmacy provides the
6 board with records of the destruction or damage of the pharmacy
7 and an expected restoration date.

8 (6) Within three calendar days of restoration of the pharmacy
9 services, the board is provided with notice of the restoration of the
10 permanent pharmacy.

11 (7) The mobile pharmacy is not operated for more than 48 hours
12 following the restoration of the permanent pharmacy.

13 ~~SEC. 41.~~

14 *SEC. 40.* Section 4111 of the Business and Professions Code
15 is amended to read:

16 4111. (a) Except as otherwise provided in subdivision (b), (d),
17 or (e), the board shall not issue or renew a license to conduct a
18 pharmacy to any of the following:

19 (1) A person or persons authorized to prescribe or write a
20 prescription, as specified in Section 4040, in the State of California.

21 (2) A person or persons with whom a person or persons specified
22 in paragraph (1) shares a community or other financial interest in
23 the permit sought.

24 (3) Any corporation that is controlled by, or in which 10 percent
25 or more of the stock is owned by a person or persons prohibited
26 from pharmacy ownership by paragraph (1) or (2).

27 (b) Subdivision (a) shall not preclude the issuance of a permit
28 for an inpatient hospital pharmacy to the owner of the hospital in
29 which it is located.

30 (c) The board may require any information the board deems is
31 reasonably necessary for the enforcement of this section.

32 (d) Subdivision (a) shall not preclude the issuance of a new or
33 renewal license for a pharmacy to be owned or owned and operated
34 by a person licensed on or before August 1, 1981, under the
35 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
36 (commencing with Section 1340) of Division 2 of the Health and
37 Safety Code) and qualified on or before August 1, 1981, under
38 subsection (d) of Section 1310 of Title XIII of the federal Public
39 Health Service Act, as amended, whose ownership includes persons
40 defined pursuant to paragraphs (1) and (2) of subdivision (a).

(e) Subdivision (a) shall not preclude the issuance of a new or renewal license for a pharmacy to be owned or owned and operated by a pharmacist authorized to issue a drug order pursuant to Section 4052.1 or 4052.2.

~~SEC. 42.~~

SEC. 41. Section 4126.5 of the Business and Professions Code is amended to read:

4126.5. (a) A pharmacy may furnish dangerous drugs only to the following:

(1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was acquired.

(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

(3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(c) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) For purposes of this section, “common control” means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

1 ~~SEC. 43.~~

2 *SEC. 42.* Section 4174 of the Business and Professions Code
3 is amended to read:

4 4174. Notwithstanding any other provision of law, a pharmacist
5 may dispense drugs or devices upon the drug order of a nurse
6 practitioner functioning pursuant to Section 2836.1 or a certified
7 nurse-midwife functioning pursuant to Section 2746.51, a drug
8 order of a physician assistant functioning pursuant to Section
9 3502.1 or a naturopathic doctor functioning pursuant to Section
10 3640.5, or the order of a pharmacist acting under Section 4052.1,
11 4052.2, or 4052.3.

12 ~~SEC. 44.~~

13 *SEC. 43.* Section 4231 of the Business and Professions Code
14 is amended to read:

15 4231. (a) The board shall not renew a pharmacist license unless
16 the applicant submits proof satisfactory to the board that he or she
17 has successfully completed 30 hours of approved courses of
18 continuing pharmacy education during the two years preceding
19 the application for renewal.

20 (b) Notwithstanding subdivision (a), the board shall not require
21 completion of continuing education for the first renewal of a
22 pharmacist license.

23 (c) If an applicant for renewal of a pharmacist license submits
24 the renewal application and payment of the renewal fee but does
25 not submit proof satisfactory to the board that the licensee has
26 completed 30 hours of continuing pharmacy education, the board
27 shall not renew the license and shall issue the applicant an inactive
28 pharmacist license. A licensee with an inactive pharmacist license
29 issued pursuant to this section may obtain an active pharmacist
30 license by paying the renewal fees due and submitting satisfactory
31 proof to the board that the licensee has completed 30 hours of
32 continuing pharmacy education.

33 (d) If, as part of an investigation or audit conducted by the board,
34 a pharmacist fails to provide documentation substantiating the
35 completion of continuing education as required in subdivision (a),
36 the board shall cancel the active pharmacist license and issue an
37 inactive pharmacist license in its place. A licensee with an inactive
38 pharmacist license issued pursuant to this section may obtain an
39 active pharmacist license by paying the renewal fees due and

1 submitting satisfactory proof to the board that the licensee has
2 completed 30 hours of continuing pharmacy education.

3 ~~SEC. 45.~~

4 *SEC. 44.* Section 4301 of the Business and Professions Code
5 is amended to read:

6 4301. The board shall take action against any holder of a license
7 who is guilty of unprofessional conduct or whose license has been
8 procured by fraud or misrepresentation or issued by mistake.
9 Unprofessional conduct shall include, but is not limited to, any of
10 the following:

11 (a) Gross immorality.

12 (b) Incompetence.

13 (c) Gross negligence.

14 (d) The clearly excessive furnishing of controlled substances
15 in violation of subdivision (a) of Section 11153 of the Health and
16 Safety Code.

17 (e) The clearly excessive furnishing of controlled substances in
18 violation of subdivision (a) of Section 11153.5 of the Health and
19 Safety Code. Factors to be considered in determining whether the
20 furnishing of controlled substances is clearly excessive shall
21 include, but not be limited to, the amount of controlled substances
22 furnished, the previous ordering pattern of the customer (including
23 size and frequency of orders), the type and size of the customer,
24 and where and to whom the customer distributes its product.

25 (f) The commission of any act involving moral turpitude,
26 dishonesty, fraud, deceit, or corruption, whether the act is
27 committed in the course of relations as a licensee or otherwise,
28 and whether the act is a felony or misdemeanor or not.

29 (g) Knowingly making or signing any certificate or other
30 document that falsely represents the existence or nonexistence of
31 a state of facts.

32 (h) The administering to oneself, of any controlled substance,
33 or the use of any dangerous drug or of alcoholic beverages to the
34 extent or in a manner as to be dangerous or injurious to oneself,
35 to a person holding a license under this chapter, or to any other
36 person or to the public, or to the extent that the use impairs the
37 ability of the person to conduct with safety to the public the practice
38 authorized by the license.

39 (i) Except as otherwise authorized by law, knowingly selling,
40 furnishing, giving away, or administering, or offering to sell,

1 furnish, give away, or administer, any controlled substance to an
2 addict.

3 (j) The violation of any of the statutes of this state, of any other
4 state, or of the United States regulating controlled substances and
5 dangerous drugs.

6 (k) The conviction of more than one misdemeanor or any felony
7 involving the use, consumption, or self-administration of any
8 dangerous drug or alcoholic beverage, or any combination of those
9 substances.

10 (l) The conviction of a crime substantially related to the
11 qualifications, functions, and duties of a licensee under this chapter.
12 The record of conviction of a violation of Chapter 13 (commencing
13 with Section 801) of Title 21 of the United States Code regulating
14 controlled substances or of a violation of the statutes of this state
15 regulating controlled substances or dangerous drugs shall be
16 conclusive evidence of unprofessional conduct. In all other cases,
17 the record of conviction shall be conclusive evidence only of the
18 fact that the conviction occurred. The board may inquire into the
19 circumstances surrounding the commission of the crime, in order
20 to fix the degree of discipline or, in the case of a conviction not
21 involving controlled substances or dangerous drugs, to determine
22 if the conviction is of an offense substantially related to the
23 qualifications, functions, and duties of a licensee under this chapter.
24 A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere is deemed to be a conviction within the meaning of
26 this provision. The board may take action when the time for appeal
27 has elapsed, or the judgment of conviction has been affirmed on
28 appeal or when an order granting probation is made suspending
29 the imposition of sentence, irrespective of a subsequent order under
30 Section 1203.4 of the Penal Code allowing the person to withdraw
31 his or her plea of guilty and to enter a plea of not guilty, or setting
32 aside the verdict of guilty, or dismissing the accusation,
33 information, or indictment.

34 (m) The cash compromise of a charge of violation of Chapter
35 13 (commencing with Section 801) of Title 21 of the United States
36 Code regulating controlled substances or of Chapter 7
37 (commencing with Section 14000) of Part 3 of Division 9 of the
38 Welfare and Institutions Code relating to the Medi-Cal program.
39 The record of the compromise is conclusive evidence of
40 unprofessional conduct.

1 (n) The revocation, suspension, or other discipline by another
2 state of a license to practice pharmacy, operate a pharmacy, or do
3 any other act for which a license is required by this chapter.

4 (o) Violating or attempting to violate, directly or indirectly, or
5 assisting in or abetting the violation of or conspiring to violate any
6 provision or term of this chapter or of the applicable federal and
7 state laws and regulations governing pharmacy, including
8 regulations established by the board or by any other state or federal
9 regulatory agency.

10 (p) Actions or conduct that would have warranted denial of a
11 license.

12 (q) Engaging in any conduct that subverts or attempts to subvert
13 an investigation of the board.

14 (r) The selling, trading, transferring, or furnishing of drugs
15 obtained pursuant to Section 256b of Title 42 of the United States
16 Code to any person a licensee knows or reasonably should have
17 known, not to be a patient of a covered entity, as defined in
18 paragraph (4) of subsection (a) of Section 256b of Title 42 of the
19 United States Code.

20 (s) The clearly excessive furnishing of dangerous drugs by a
21 wholesaler to a pharmacy that primarily or solely dispenses
22 prescription drugs to patients of long-term care facilities. Factors
23 to be considered in determining whether the furnishing of
24 dangerous drugs is clearly excessive shall include, but not be
25 limited to, the amount of dangerous drugs furnished to a pharmacy
26 that primarily or solely dispenses prescription drugs to patients of
27 long-term care facilities, the previous ordering pattern of the
28 pharmacy, and the general patient population to whom the
29 pharmacy distributes the dangerous drugs. That a wholesaler has
30 established, and employs, a tracking system that complies with
31 the requirements of subdivision (b) of Section 4164 shall be
32 considered in determining whether there has been a violation of
33 this subdivision. This provision shall not be interpreted to require
34 a wholesaler to obtain personal medical information or be
35 authorized to permit a wholesaler to have access to personal
36 medical information except as otherwise authorized by Section 56
37 and following of the Civil Code. For purposes of this section,
38 “long-term care facility” shall have the same meaning given the
39 term in Section 1418 of the Health and Safety Code.

40 (t) This section shall become operative on January 1, 2006.

1 ~~SEC. 46.~~

2 *SEC. 45.* Section 4305 of the Business and Professions Code
3 is amended to read:

4 4305. (a) Failure by any pharmacist to notify the board in
5 writing that he or she has ceased to act as pharmacist-in-charge of
6 a pharmacy, or by any pharmacy to notify the board in writing that
7 a pharmacist-in-charge is no longer acting in that capacity, within
8 the 30-day period specified in Sections 4101 and 4113 shall
9 constitute grounds for disciplinary action.

10 (b) Operation of a pharmacy for more than 30 days without
11 supervision or management by a pharmacist-in-charge shall
12 constitute grounds for disciplinary action.

13 (c) Any person who has obtained a license to conduct a
14 pharmacy, who willfully fails to timely notify the board that the
15 pharmacist-in-charge of the pharmacy has ceased to act in that
16 capacity, and who continues to permit the compounding or
17 dispensing of prescriptions, or the furnishing of drugs or poisons,
18 in his or her pharmacy, except by a pharmacist subject to the
19 supervision and management of a responsible pharmacist-in-charge,
20 shall be subject to summary suspension or revocation of his or her
21 license to conduct a pharmacy.

22 ~~SEC. 47.~~

23 *SEC. 46.* Section 4329 of the Business and Professions Code
24 is amended to read:

25 4329. Any nonpharmacist who takes charge of or acts as
26 supervisor, manager, or pharmacist-in-charge of any pharmacy,
27 or who compounds or dispenses a prescription or furnishes
28 dangerous drugs except as otherwise provided in this chapter, is
29 guilty of a misdemeanor.

30 ~~SEC. 48.~~

31 *SEC. 47.* Section 4330 of the Business and Professions Code
32 is amended to read:

33 4330. (a) Any person who has obtained a license to conduct
34 a pharmacy, who fails to place in charge of the pharmacy a
35 pharmacist, or any person, who by himself or herself, or by any
36 other person, permits the compounding or dispensing of
37 prescriptions, or the furnishing of dangerous drugs, in his or her
38 pharmacy, except by a pharmacist, or as otherwise provided in this
39 chapter, is guilty of a misdemeanor.

1 (b) Any pharmacy owner who commits any act that would
2 subvert or tend to subvert the efforts of the pharmacist-in-charge
3 to comply with the laws governing the operation of the pharmacy
4 is guilty of a misdemeanor.

5 ~~SEC. 49.~~

6 *SEC. 48.* Section 4990.09 is added to the Business and
7 Professions Code, to read:

8 4990.09. The board shall not publish on the Internet the final
9 determination of a citation and fine of one thousand five hundred
10 dollars (\$1,500) or less issued against a licensee or registrant
11 pursuant to Section 125.9 for a period of time in excess of five
12 years from the date of issuance of the citation.

13 ~~SEC. 50.~~

14 *SEC. 49.* Section 8659 of the Government Code is amended
15 to read:

16 8659. Any physician or surgeon (whether licensed in this state
17 or any other state), hospital, pharmacist, respiratory care
18 practitioner, nurse, or dentist who renders services during any state
19 of war emergency, a state of emergency, or a local emergency at
20 the express or implied request of any responsible state or local
21 official or agency shall have no liability for any injury sustained
22 by any person by reason of those services, regardless of how or
23 under what circumstances or by what cause those injuries are
24 sustained; provided, however, that the immunity herein granted
25 shall not apply in the event of a willful act or omission.

26 ~~SEC. 51.~~

27 *SEC. 50.* Section 11150 of the Health and Safety Code is
28 amended to read:

29 11150. No person other than a physician, dentist, podiatrist,
30 or veterinarian, or naturopathic doctor acting pursuant to Section
31 3640.7 of the Business and Professions Code, or pharmacist acting
32 within the scope of a project authorized under Article 1
33 (commencing with Section 128125) of Chapter 3 of Part 3 of
34 Division 107 or within the scope of Section 4052.1 or 4052.2 of
35 the Business and Professions Code, a registered nurse acting within
36 the scope of a project authorized under Article 1 (commencing
37 with Section 128125) of Chapter 3 of Part 3 of Division 107, a
38 certified nurse-midwife acting within the scope of Section 2746.51
39 of the Business and Professions Code, a nurse practitioner acting
40 within the scope of Section 2836.1 of the Business and Professions

1 Code, a physician assistant acting within the scope of a project
2 authorized under Article 1 (commencing with Section 128125) of
3 Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the
4 Business and Professions Code, a naturopathic doctor acting within
5 the scope of Section 3640.5 of the Business and Professions Code,
6 or an optometrist acting within the scope of Section 3041 of the
7 Business and Professions Code, or an out-of-state prescriber acting
8 pursuant to Section 4005 of the Business and Professions Code
9 shall write or issue a prescription.

10 ~~SEC. 52.~~

11 *SEC. 51.* Section 11165 of the Health and Safety Code is
12 amended to read:

13 11165. (a) To assist law enforcement and regulatory agencies
14 in their efforts to control the diversion and resultant abuse of
15 Schedule II, Schedule III, and Schedule IV controlled substances,
16 and for statistical analysis, education, and research, the Department
17 of Justice shall, contingent upon the availability of adequate funds
18 from the Contingent Fund of the Medical Board of California, the
19 Pharmacy Board Contingent Fund, the State Dentistry Fund, the
20 Board of Registered Nursing Fund, and the Osteopathic Medical
21 Board of California Contingent Fund, maintain the Controlled
22 Substance Utilization Review and Evaluation System (CURES)
23 for the electronic monitoring of the prescribing and dispensing of
24 Schedule II, Schedule III, and Schedule IV controlled substances
25 by all practitioners authorized to prescribe or dispense these
26 controlled substances.

27 (b) The reporting of Schedule III and Schedule IV controlled
28 substance prescriptions to CURES shall be contingent upon the
29 availability of adequate funds from the Department of Justice. The
30 Department of Justice may seek and use grant funds to pay the
31 costs incurred from the reporting of controlled substance
32 prescriptions to CURES. Funds shall not be appropriated from the
33 Contingent Fund of the Medical Board of California, the Pharmacy
34 Board Contingent Fund, the State Dentistry Fund, the Board of
35 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the
36 Osteopathic Medical Board of California Contingent Fund to pay
37 the costs of reporting Schedule III and Schedule IV controlled
38 substance prescriptions to CURES.

39 (c) CURES shall operate under existing provisions of law to
40 safeguard the privacy and confidentiality of patients. Data obtained

1 from CURES shall only be provided to appropriate state, local,
2 and federal persons or public agencies for disciplinary, civil, or
3 criminal purposes and to other agencies or entities, as determined
4 by the Department of Justice, for the purpose of educating
5 practitioners and others in lieu of disciplinary, civil, or criminal
6 actions. Data may be provided to public or private entities, as
7 approved by the Department of Justice, for educational, peer
8 review, statistical, or research purposes, provided that patient
9 information, including any information that may identify the
10 patient, is not compromised. Further, data disclosed to any
11 individual or agency as described in this subdivision shall not be
12 disclosed, sold, or transferred to any third party.

13 (d) For each prescription for a Schedule II, Schedule III, or
14 Schedule IV controlled substance, the dispensing pharmacy or
15 clinic shall provide the following information to the Department
16 of Justice on a weekly basis and in a format specified by the
17 Department of Justice:

18 (1) Full name, address, and the telephone number of the ultimate
19 user or research subject, or contact information as determined by
20 the Secretary of the United States Department of Health and Human
21 Services, and the gender, and date of birth of the ultimate user.

22 (2) The prescriber's category of licensure and license number;
23 federal controlled substance registration number; and the state
24 medical license number of any prescriber using the federal
25 controlled substance registration number of a government-exempt
26 facility.

27 (3) Pharmacy prescription number, license number, and federal
28 controlled substance registration number.

29 (4) NDC (National Drug Code) number of the controlled
30 substance dispensed.

31 (5) Quantity of the controlled substance dispensed.

32 (6) ICD-9 (diagnosis code), if available.

33 (7) Number of refills ordered.

34 (8) Whether the drug was dispensed as a refill of a prescription
35 or as a first-time request.

36 (9) Date of origin of the prescription.

37 (10) Date of dispensing of the prescription.

38 (e) This section shall become operative on January 1, 2005.

1 ~~SEC. 53.~~

2 *SEC. 52.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 19, 2008

From: Tracy Rhine
Legislation Analyst

Telephone: (916) 574-7847

Subject: Proposed Technical Statutory Changes

Introduction

The following are technical statutory changes that the board may want to consider adding to omnibus legislation in the 2007-08 legislative session.

Marriage and Family Therapy Act Title

Background: Chapter 13 of Division 2 of the Business and Professions Code (BPC) sets forth the laws regulating the practice of marriage and family therapy.

Problem: The licensing laws regulating the practice of Licensed Clinical Social Workers (LCSWs) and Licensed Educational Psychologists begin each respective chapter with a section noting the title of the Act. Marriage and family therapy licensing law has no such code section and therefore no codified language by which to cite the licensing law as a whole.

Recommendation: Staff recommends adding a code section to the beginning of Chapter 13 of Division 2 as follows:

"This chapter shall be known, and may be cited, as the Marriage and Family Therapy Act."

LCSW Licensure Eligibility for Applicants Licensed in Another State

Background: BPC section 4996.17 sets forth the LCSW licensure requirements and qualifications for applicants with education and experience gained outside California. One method to obtain licensure in California under this section requires an applicant to provide certification from each state where he or she holds a license and to meet other experience and coursework requirements.

Problem: BPC section 4996.17(b)(5) reads as follows:

*The applicant shall provide a certification from each state where he or she **holds** a license pertaining to licensure, disciplinary action, and complaints pending.*

This subdivision requires that the applicant has a current license in another state or states. However, BPC section 4996.17(b) uses the past tense when describing the out-of-state licensure:

*The board may issue a license to any person who, at the time of application, **has held** a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following...*

It is clear that the intent is to require applicants coming from another state, under this provision, to hold a current active license. A second provision within this same section sets forth requirements for applicants that have held a valid active clinical social worker license for at least four years.

Recommendation: Staff recommends that the following amendment to BPC section 4996.17(b):

The board may issue a license to any person who, at the time of application, ~~has held~~ holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following...

Obsolete language

Background: BPC section 4994.1 requires the board to reduce the fees assessed by the board in the event that the moneys loaned to the General Fund in the 1991 Budget Act are redeposited.

Problem: This code section is no longer applicable.

Recommendation: Staff recommends that the BPC section 4994.1 be repealed in an effort to keep board licensing acts concise and relevant.

~~**4994.1.** If those moneys transferred from the Behavioral Science Examiners Fund to the General Fund pursuant to the 1991 Budget Act are redeposited to the Behavioral Science Examiners Fund, the fees assessed by the board shall be reduced correspondingly.~~

ATTACHMENT

BPC 4996.17

§4996.17. ACCEPTANCE OF EDUCATION AND EXPERIENCE GAINED OUTSIDE OF CALIFORNIA

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, has held a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has

held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

1625 North Market Blvd., Suite S-200
Sacramento, CA 95834
(916) 574-7830, (916) 574-8625 Fax
www.bbs.ca.gov

To: Board Members

Date: May 14, 2008

From: Paul Riches
Executive Officer

Telephone: (916) 574-7840

Subject: Community Assessment of Board Effectiveness

In its strategic plan, the board adopted objective 1.7 as follows:

Increase Board appointees' effectiveness index 10% by July 1, 2012.

At its November 2007 meeting, the board approved a methodology for assessing board member effectiveness that included ongoing community assessment of the board's effectiveness. The proposed assessment focuses on the degree to which the board's activity as a governing body exemplifies our values as articulated in the BBS Way:

Be a person of *integrity*.
Be *dedicated* and *professional*.
Serve with *excellence*.

Attached to this memo is a draft questionnaire that is the same as the questionnaire used for the board self assessment. Each question is listed according to the value it reflects and has four questions for each value. We are seeking guidance from board members and stakeholders as to the suitability of these questions for the community assessment and suggestions for possible alternate questions.

Once completed, the instrument will be used after each quarterly board meeting.

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THE BBS WAY:

***BE A PERSON OF INTEGRITY
BE PROFESSIONAL AND DEDICATED
SERVE WITH EXCELLENCE***

Community Assessment of Board Effectiveness

On a scale of 1 to 5 (1 = never, 2 = rarely, 3 = sometimes, 4 = very often, 5 = always) please rate the board's overall performance on each item. The items are grouped according to the five values that comprise the BBS Way.

Integrity

1. Does the board exhibit commitment to its vision and mission?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

2. Does the board honestly debate and discuss issues before it in public meetings?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

3. Does the board consistently respect its boundaries as a governmental policy making body?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

4. Does the board base its decisions on information and comments presented to it?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Professionalism

1. Does the board openly accept and respond to constructive criticism?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

2. Does the board respect and value the roles of all professions and consumers?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

3. Does the board hold its members accountable for supporting organizational norms and values?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board hold the executive officer accountable for effective staff operations and implementing board policy?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Dedication

1. Is the board prepared to address the issues on each agenda?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board respect and support the priorities of each board member?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Does the board actively seek information and expertise from external sources?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board respond to public demand to address issues of concern?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Service

1. Does the board exhibit a primary commitment to public protection?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board actively engage in dialogue with the public?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Does the board responsibly seek out and support positive changes in mental health care?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board demand quality service from its staff?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Excellence

1. Does the board exhibit a proactive approach to understanding and addressing public needs?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

2. Does the board exhibit responsiveness to the challenges presented by public and professional diversity?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

3. Is the board open to adapting its policies and practices based on changes in its environment?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

4. Does the board exhibit commitment to the priorities established by its strategic plan?

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Are there specific board actions or events that illustrate your responses to the above questions?

Other Comments:

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BOARD OF BEHAVIORAL SCIENCES
BREAKDOWN OF ENFORCEMENT COMPLAINT ACTIVITY BY LICENSEE POPULATION
2007 - 2008
FISCAL YEAR ⁽¹⁾

	OPENED	COMPLAINTS CLOSED	PENDING	Licenses In Effect (2)	% of Licenses to Pending Complaints
UNLICENSED	107	111	33	n/a	n/a
APPLICANTS	259	249	35	n/a	n/a
CE PROVIDERS	1	5	2	2303	0.09
DUAL LICENSEES (3)	8	19	2	n/a	n/a
DUAL W/BOP (3)	8	14	3	n/a	n/a
ASW	56	46	47	7645	0.61
LCSW	156	174	72	16797	0.43
IMF	97	87	79	11075	0.71
MFT	357	393	197	28918	0.68
LEP	4	3	4	1774	0.23
TOTAL	1053	1101	474	68512	0.69

Note: (1) Activity is from July 1, 2007 through March 31, 2008. Pending as of March 31, 2008.
(2) Licenses in effect as of March 31, 2008. Does not include cancelled, revoked, or voluntary surrender of licenses.
(3) Dual licensees are those that hold dual licenses with BBS. Dual w/BOP are licensed with BBS and the Board of Psychology.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES
BREAKDOWN OF ENFORCEMENT COMPLAINT CLOSURES BY TYPE
2007 - 2008
FISCAL YEAR ⁽¹⁾

	Unactionable (2)	Mediated (3)	Citation (4)	Violation (5)	Inv. (6)	District Attorney (7)	Rfrd Disp. (8)	Other (9)	TOTAL
UNLICENSED	94	0	3	7	4	0	0	3	111
APPLICANTS	0	0	0	240	1	0	4	4	249
CE PROVIDER	5	0	0	0	0	0	0	0	5
DUAL LICENSEES (10)	11	0	2	4	0	0	1	1	19
DUAL W/BOP (10)	6	0	4	1	0	0	2	1	14
ASW	20	0	0	23	1	0	0	2	46
LCSW	106	3	19	39	1	0	5	1	174
IMF	44	2	0	22	5	0	11	3	87
MFT	250	0	53	58	14	0	8	10	393
LEP	2	0	0	0	1	0	0	0	3
TOTAL	538	5	81	394	27	0	31	25	1101

49%

51%

Note:

- (1) Closure activity is from July 1, 2007 through March 31, 2008.
- (2) Unactionable: Complaints which after review are closed no violation, insufficient evidence, no jurisdiction etc.
- (3) Mediated: Complaints which have no violation, but where a resolution was reached between parties.
- (4) Citation: Complaints in which after review, violations have been found and the complaint was closed upon the issuance of a citation.
- (5) Violation: Complaints which after review, violations have been found and were closed upon the issuance of a cease and desist or warning letter.
- (6) Inv.: Complaints which were closed after an investigation was conducted.
- (7) District Attorney: Complaints which, after review, a determination is made that the matter should be referred to the DA's office.
- (8) Rfrd Disp: Complaints which are referred directly to the Attorney General's office for disciplinary action (no investigation was required).
- (9) Other: Complaints closed in any manner which does not fit within one of the other categories.
- (10) Dual licensees are those that hold dual licenses with BBS. Dual w/BOP are licensed with BBS and the Board of Psychology.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES
CATEGORY OF PENDING COMPLAINTS
As of March 31, 2008

AGENCY CATEGORY	CE	UL	AP	DL	DP	AS	LC	IM	MF	LEP	TOTAL
Fraud	0	0	0	0	0	0	1	0	3	0	4
Fraudulent License	0	2	0	0	0	0	0	0	1	0	3
Insurance, Medi-Cal	0	0	0	0	0	0	1	2	4	0	7
Health & Safety	0	0	0	0	0	0	0	0	1	0	1
Non-Jurisdictional	0	1	0	0	0	0	0	1	1	0	3
Custody	0	0	0	0	0	0	9	0	15	0	24
Fee Disputes	0	0	0	0	0	0	2	1	2	0	5
Exempt from licensure	0	3	0	0	0	1	0	0	0	0	4
Negligence	0	0	0	0	0	0	3	3	5	0	11
Beyond Scope	0	0	0	1	0	0	1	0	1	1	4
Dual Relationship	0	0	0	0	0	0	3	0	4	0	7
Abandonment	0	0	0	0	0	0	2	2	1	0	5
Improper Supervision	0	0	0	0	0	0	4	0	4	0	8
Misdiagnosis	0	0	0	0	0	0	0	0	2	0	2
Failure/Report Abuse	0	0	0	0	0	0	3	1	2	0	6
Aiding & Abetting	0	0	0	0	0	0	0	0	2	0	2
Other	0	0	0	0	0	0	0	0	0	0	0
Mental Illness	0	0	0	0	0	2	0	0	3	0	5
Self Use Drugs/Alcohol	0	0	0	0	0	1	1	0	1	0	3
Conviction of Crime	0	0	2	0	0	30	5	40	25	0	102
Unprofessional Conduct	1	1	0	0	2	8	23	9	81	2	127
Sexual Misconduct	0	0	0	1	1	0	2	2	7	0	13
Breach of Confidentiality	0	0	0	0	0	0	2	1	10	0	13
Emotional/Phys. Harm	0	0	0	0	0	0	0	0	4	0	4
Advertising / Misrepresentation	0	1	0	0	0	1	0	11	3	0	16
Unlicensed Practice	1	25	0	0	0	0	0	3	2	0	31
Repressed Memory	0	0	0	0	0	0	0	0	0	0	0
Third Party Complaint	0	0	0	0	0	0	3	0	6	0	9
Unsafe/Sanitary Conditions	0	0	0	0	0	0	0	0	0	0	0
Discipline by Another State	0	0	1	0	0	0	1	1	1	0	4
Criminal Convictions - Renewal Reported	0	0	0	0	0	2	1	1	3	1	8
Non Compliance with CE Audit	0	0	0	0	0	0	4	0	2	0	6
Applicant Referral for Criminal Conviction	0	0	32	0	0	2	0	1	0	0	35
Subvert Licensing Exam	0	0	0	0	0	0	0	0	0	0	0
Unregistered Referral Service	0	0	0	0	0	0	0	0	0	0	0
Failure to Provide Records	0	0	0	0	0	0	1	0	1	0	2
TOTAL	2	33	35	2	3	47	72	79	197	4	474

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES
BREAKDOWN OF ENFORCEMENT ACTIVITY - CASES AT THE AG'S OFFICE
BY LICENSEE POPULATION
2007 - 2008 FISCAL YEAR ⁽¹⁾

	PENDING	Licenses In Effect (2)	% of Licenses to Pending Cases
UNLICENSED	0	n/a	n/a
APPLICANTS	7	n/a	n/a
SUSEQUENT DISP. (3)	2	n/a	n/a
DUAL LICENSEES (4)	1	n/a	n/a
DUAL W/BOP (4)	2	n/a	n/a
CE PROVIDERS	0	2303	0.00
ASW	4	7645	0.05
LCSW	5	16797	0.03
IMF	15	11075	0.14
MFT	19	28918	0.07
LEP	1	1774	0.06
TOTAL	56	68512	0.08

- Note:
- (1)** Pending as of March 31, 2008.
 - (2)** Licenses in effect as of March 31, 2008. Does not include cancelled, revoked, or voluntary surrender of licenses.
 - (3)** Subsequent Discipline for violation of probation.
 - (4)** Dual licensees are those that hold dual licenses with BBS. Dual w/BOP are licensed with BBS and the Board of Psychology.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES
CATEGORY TYPES OF DISCIPLINARY ACTION TAKEN
2007 - 2008
FISCAL YEAR *

		MFT IMF	LCSW ASW	LEP	APPLICANT
REVOC. STAYED: PROB ONLY					
Unprofessional Conduct		1			
Fraud - Insurance, MediCal			1		
Conviction of a Crime			2		
Unlicensed Practice					1
Discipline by Another State			1		
Subtotal	6				
REVOC. STAYED: PROB, SUSPENSION					
Improper Supervision		1			
Fraud - Insurance, MediCal		1			
Sexual Misconduct		1			
Unprofessional Conduct		1	1		
Conviction of a Crime		1			
Subtotal	6				
REVOKED					
Conviction of a Crime		1	2		
Unprofessional Conduct			1		
Unlicensed Practice		1			
Sexual Misconduct		2			
Subtotal	7				
SURRENDER OF LICENSE					
Unprofessional Conduct		4			
Emotional Harm		1	1		
Sexual Misconduct		1			
Conviction of a Crime			1		
Subtotal	8				
PUBLIC REPROVAL					
Improper Supervision			1		
Subtotal	1				
TOTAL	28				

* Time frame: July 1, 2007 through March 31, 2008

Note: These statistics are for informational purposes only and should not be used as the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES CITATIONS ISSUED BY CATEGORY

	03/04	04/05	05/06	06/07	07/08*
Agency Category Types					
Fraud				1	
Sexual Misconduct				1	1
Improper Supervision	1	2		5	
Aiding & Abetting			1		
Failure/Report Abuse	1				
Breach of Confidence	6	5	5	4	3
Advertising/Misrepresentation	1	1		1	1
Custody					1
Unlicensed Practice	3	7	2	3	3
Failure Report Conviction on Renewal				1	
Non Compliance with CE Audit	6	44	148	169	69
Failure Report Conviction on Application		1	1		
Subvert Licensing Exam	1				
Practicing Beyond Scope		1			
Client Abandonment			1		
Unprofessional Conduct		2	2	6	4
TOTAL	19	63	160	191	82

	03/04	04/05	05/06	06/07	07/08*
Number of Citations with Fines Ordered	19	63	160	191	79
Fines Assessed			\$61,650.00	\$90,250.00	\$74,800.00
Fines Collected (1)			\$37,150.00	\$53,149.19	\$39,750.00

(1) May reflect collection of fines ordered in previous fiscal years.

* 07/08 Fiscal Year through: March 31, 2008

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES RECOVERY COSTS

	03/04	04/05	05/06	06/07	07/08*
Number Cases Ordered	9	12	11	22	22
Total Amount Ordered	\$25,497.50	\$73,791.25	\$47,751.25	\$101,778.25	\$152,263.40
Stipulation - Revocation(1)			\$1,320.00	\$1,350.50	\$18,773.00
Stipulation - Voluntary Surrender(2)			\$36,008.25	\$24,187.25	\$57,239.63
Stipulation - Probation			\$1,500.00	\$59,425.75	\$39,096.00
Stipulation - Accusation withdrawn			\$0.00	\$4,000.00	\$4,745.25
Decision - Revocation			\$6,410.50	\$10,419.25	\$7,413.00
Decision - Probation			\$2,512.50	\$2,395.50	\$24,996.52
Total Amount Collected (3)	\$20,600.08	\$23,791.89	\$15,168.57	\$15,244.98	\$31,251.05
Intercepted by FTB Program			\$314.73	\$0.00	\$0.00
Cost Collected in Payments			\$8,058.34	\$9,456.98	\$25,439.30
Cost Collected in Lump Sum			\$6,795.50	\$5,788.00	\$5,811.75

(1) Cost recovery only required if the respondent pursues reinstatement (may never be recovered).

(2) Cost recovery only required if the respondent reappplies for licensure (may never be recovered).

(3) May reflect collection of cost recovery ordered in previous fiscal years.

* 07/08 Fiscal Year through: March 31, 2008

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES REIMBURSEMENT OF PROBATION PROGRAM

	03/04	04/05	05/06	06/07	07/08 *
# Cases Ordered	1	3	4	15	4
Amount Ordered Per Year (\$1,200)	\$6,000.00	\$16,800.00	\$19,200.00	\$80,400.00	\$45,500.00
Amount Collected	0	\$1,900.00	\$3,800.00	\$8,750.00	\$11,800.00

* 07/08 Fiscal Year through: March 31, 2008

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

**BOARD OF BEHAVIORAL SCIENCES
ENFORCEMENT AGING DATA
2007 - 2008 FISCAL YEAR ⁽¹⁾**

	0-3 mo	4-6 mo	7-9 mo	10-12 mo	1-2 years	2-3 years	Over 3 Years	Total
Pending Complaints ⁽²⁾	209	124	37	29	39		0	438
Pending Complaints with Consultant ⁽³⁾		1	1	1	3			6
Pending Investigations ⁽⁴⁾	4	4	2	4	13	3	0	30
Total Pending Complaints (Includes Inv) ⁽⁵⁾	213	129	40	34	55	3	0	474
Pending Cases at the AG - Pre Accusation ⁽⁶⁾	18	10	2	2	0	0	0	32
Pending Cases at the AG - Post Accusation ⁽⁷⁾	6	8	1	5	3	0	1	24
Total Pending Cases at the AG's Office	24	18	3	7	3	0	1	56

(1) Pending as of March 31, 2008.

(2) Pending Complaints are those complaints which are not currently being investigated by the Division of Investigation.

(3) Pending Complaints are those complaints which are with Expert Consultant.

(4) Pending Investigations are those complaints which are being investigated by the Division of Investigation.

(5) Total Pending Complaints includes pending complaints and pending investigations.

(6) Pre Accusation are those pending cases at the AG's office where an accusation or statement of issues has not been filed yet.

(7) Post Accusation are those pending cases at the AG's office where a accusation or statement of issues has been filed.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.

BOARD OF BEHAVIORAL SCIENCES
Overview of Enforcement Activity

Fiscal Years		03/04	04/05	05/06	06/07	07/08*
Complaints / Cases Opened						
Complaints Received	514	560	626	801	910	676
Criminal Convictions Received	384	383	384	455	452	377
Total Complaints Received	898	943	1010	1256	1362	1053
Investigations Opened	25	11	25	44	32	15
Cases Sent to AG	41	17	25	55	42	36
Filings						
Citations Issued	24	19	63	160	191	82
Accusations Filed	17	22	17	29	37	14
Statement of Issues (SOI's) filed	4	4	2	1	5	2
Temporary Restraining Order	0	0	0	0	0	0
Interim Suspension Orders	0	1	0	1	0	0
Withdrawals/Dismissals						
Accusations Withdrawn or Dismissed	1	0	1	1	4	2
SOI's Withdrawn or Dismissed	1	0	0	0	0	0
Declined by the AG	7	3	1	3	4	1
Disciplinary Decision Outcomes						
Revoked	4	10	4	7	7	7
Revoked, Stayed, Susp & Probation	2	1	2	0	6	6
Revoked, Stayed, Probation	6	5	2	4	9	6
Surrender of License	7	7	7	9	6	8
Suspension	0	0	0	0	0	0
Susp., Stayed, Susp & Prob	0	0	0	0	0	0
Susp., Stayed Probation	1	0	0	0	0	0
Susp & Prob Only	0	0	0	0	0	0
License Probation Only	0	0	0	0	0	0
Reprimand / Reproval	1	0	0	0	0	1
Other Decisions	0	0	0	0	1	0
Total Decisions	21	23	15	20	29	28
Decisions (By Violation Type)						
Fraud	1	0	1	0	1	2
Health & Safety	0	0	1	2	0	0
Sexual Misconduct	5	5	5	5	2	5
Competence / Negligence	2	9	2	2	0	2
Personal Conduct	7	3	4	7	18	8
Unprofessional Conduct	4	4	2	4	8	8
Unlicensed Activity	0	0	0	0	0	3
Other	0	0	0	0	0	0
Violation of Probation	2	2	0	0	0	0

* Fiscal Year Period: 7/1/07 through 03/31/08.

Note: These statistics are for informational purposes only and should not be used as the the sole source to analyze the Board's enforcement program.